Preliminary Paper No. 1

LEGISLATION AND ITS INTERPRETATION

THE ACTS INTERPRETATION ACT 1924 AND RELATED LEGISLATION

A discussion paper and questionnaire

The Law Commission seeks your response to the questions raised in this paper and welcomes your comments.

The completed questionnaire and any other comments should be forwarded to:
The Director, Law Commission, P.O. Box 2590, Wellington
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PREFACE

On the fifth day of December 1840, in the fourth year of her Reign, Queen Victoria was pleased to give instructions to her trusty and well beloved William Hobson, her Governor and Commander in Chief in and over New Zealand. One was that all laws and ordinances to be enacted by the Legislative Council "be drawn up in a simple and compendious form, avoiding as far as may be all prolixity and tautology".

The Law Commission Act 1985 gives a similar direction. The Commission is to advise on ways in which the law can be made as understandable as is practicable, and as well is to have regard to the desirability of simplifying the expression and content of the law, again as far as that is practicable.

Interpretation legislation bears on all those objectives. It can reduce tautology – prolix or not – by providing a statutory dictionary of words and phrases which commonly occur in statutes (the meaning of "New Zealand" or "the Governor-General in Council" for instance). It can have the same effect by giving an extended meaning to such words (for instance that singular words include the plural and that references to the Attorney-General include the SolicitorGeneral), or by providing powers supplementary to those conferred (such as a power of dismissal being attached to powers of appointment). Those steps can make the statute book both more understandable and simpler. So too can the provisions in interpretation legislation about the operation of legislation (for instance, relating to its commencement, amendment and repeal) and about its various elements such as preambles and schedules.

This paper is a step in the preparation of a new interpretation statute. Our purposes in distributing it are –

- to discover experience of the operation of the Acts Interpretation Act 1924 and related legislation, and

- to prompt proposals for the reform of the Act and related legislation.

The proposals need not be for provisions of general application which are to be included in a new interpretation statute or related legislation. They might instead be for model provisions which can, with appropriate amendment, be included in particular statutes in a relatively routine way.

The issues raised by the paper are in part technical. Some are larger matters of legal policy –

- What impact should new legislation have on existing situations (Paras. 26–79)?

- Should the State in general be bound by the statute book or immune from it (Paras. 100–103)?

- Should the executive have the power (through the possibly inadvertent use of the word "Act" in a particular statute) to amend Acts of Parliament by way of regulation (Paras. 112–115)?

- Should those who have powers to appoint officers in general have an unfettered power to dismiss them (Para.204)?

The technical aspects are important as well. They can lead, as mentioned above, to a simpler and more understandable statute book.

Because this paper is addressed to the fourth of the terms of reference (set out on the following page) it does not consider some of the central provisions of the Acts Interpretation Act 1924 (contained in s.5) relating to general approaches to interpretation. That is the third of the terms of reference and the subject of separate papers.

The paper also does not address some aspects of the relationship between statutes and the general law, in particular the consequences of breach of or non-compliance with statutory provisions, e.g. can damages or an injunction be sought by the person affected by the breach; and is an official action which does not comply with the law effective or not (a matter partly dealt with in s.5(i) of the Act)? Those matters too will be taken up separately.

We wish to have comments – relevant experience, opinion, and proposals for reform – by Friday, 17 July 1987 so that we can then move to the stage of draft legislation and related recommendations. We have asked questions throughout the paper. We have also for your convenience set them out in a separate questionnaire.

To contain the bulk of what is already a lengthy paper, we have made only limited references to relevant cases, to other countries' legislation, and to the writing. Professor Burrows' commentary to Halsbury's Laws of England on Statutes is of great value. See also the books on statutory interpretation by Pearce, Bennion, Cross, Maxwell and Craies.

Any queries about the paper should be directed in the first instance to Janet McLean ((04) 733 453).

TERMS OF REFERENCE

The Minister of Justice has made a reference to the Law Commission on legislation and its interpretation. The reference is as follows:

Purposes of reference

1. To propose ways of making legislation as understandable and accessible as practicable and of ensuring that it is kept under review in a systematic way.

2. To ascertain what changes, if any, are necessary or desirable in the law relating to the interpretation of legislation.

Reference

With these purposes in mind, the Commission is asked to examine and review –

1. The language and structure of legislation

2. Arrangements for the systematic monitoring and review of legislation

3. The law relating to the interpretation of legislation

4. The provisions of the Acts Interpretation Act 1924 and related legislation

and to recommend changes, as appropriate, to the relevant law and practice.

TABLE OF PROVISIONS: ACTS INTERPRETATION ACT 1924

INTRODUCTION

THE PURPOSE OF THE PAPER

1. This paper relates to the final item of the terms of reference – the examination and review of the Acts Interpretation Act 1924 and related legislation, and the recommendation of appropriate changes.

2. One principal purpose in issuing this paper is to discover the relevant experience of users of the 1924 Act and related legislation. The main users are of course lawyers – but not only lawyers – and particularly the lawyers in government departments and other public bodies. In addition to hearing about that experience we welcome any proposals for changes to the legislation and any other comments. You will see that we ask particular questions throughout the paper. We will ourselves be undertaking further research on the matters raised.

3. The four items in the reference are closely linked. Thus from their beginning well over 100 years ago the general interpretation statutes have had as one purpose the shortening of legislation and its consistent drafting (matters related to the first item, the language and structure of statutes). Another purpose is to give general directions to the courts about the way in which they are to interpret statutes (the third item). For the moment however our attention is essentially on the fourth item.

4. Other jurisdictions have recently rewritten their interpretation legislation, for instance the United Kingdom in 1978, Victoria in 1984, Western Australia in 1984 and New South Wales this year. Mr G. C. Thornton, a New Zealand lawyer and a very experienced parliamentary counsel, has prepared a draft interpretation bill for the Commonwealth Secretariat. Later paragraphs make some reference to those provisions.

THE QUESTIONS

5. The Acts Interpretation Act 1924 contains provisions bearing on nine major matters:

I Its applicability (Paras. 7–14)

II The commencement of legislation (Paras. 15–25)

III Temporal application of legislation: retro-activity, repeals and transition (Paras. 26–79)

IV The proof, availability, and citation of legislation (Paras. 80–89)

V The elements and characteristics of the statute (Paras. 90–98)

VI Principles of interpretation (Paras. 99–104)

VII Standard definitions, time and distance (Paras. 105–196)

VIII Powers (Paras. 197–212)

IX Criminal and penal matters (Paras. 213–218)

6. In Parts I to IX we consider these matters in turn. In Part X (Paras. 219–231) we consider the "related legislation" referred to in the terms of reference. And we raise questions in respect of each matter. The questions are not necessarily the only ones to be considered; please do not feel limited to them. We would be interested for instance in hearing about provisions which might be added to an interpretation statute.

I THE APPLICABILITY OF THE INTEPRETATION LEGISLATION

THE POSITIVE PROVISIONS

7. The Acts Interpretation Act 1924 contains two sets of provisions, positive and negative, relating to the applicability of its provisions. On the positive side the Act says that it applies to –

- all Acts of Parliament (s.2, see also s.3) including the Acts Interpretation Act itself (s.28)
- all regulations (because "Act" includes all rules and regulations made under an Act of Parliament, s.4; see also s.7)
- certain regulations made by New Zealand authorities under the authority of Imperial legislation (Statutes Amendment Act 1936 s.3)

The main questions raised by this list are whether the Act should apply as well to –

- Imperial Acts and regulations which are part of New Zealand law
- other subordinate legislation (such as bylaws) or acts done under the authority of statutes

Imperial Acts

8. The Interpretation Act 1888 applied to the Constitution Act in the same manner as it applied to Acts of the General Assembly and to every other Imperial Act in force in New Zealand except when inconsistent with the context of that Act or where the application would contradict any proclamation, Privy Council order, or other instrument made under the Act (s.3). The 1908 Act contained a provision to similar effect without the express reference to the Constitution Act (s.3). The 1924 Act, as indicated, has a narrower application. Perhaps the reason for the non application of the Act to Imperial legislation in 1924 was the fact that the New Zealand Parliament could not at that time have amended Imperial statutes which were extended to New Zealand as part of its law: Colonial Laws Validity Act 1865. (An interpretation statute in terms different from the Imperial one could be seen as purporting to have that effect.) Moreover, the expectation would have been that

Imperial statutes should have the same meaning throughout the Empire. That latter expectation no doubt also applied to pre 1840 acts (such as the Wills Act 1837) which as part of the law of England became part of the law of New Zealand, although in that case the repugnancy limit would not have applied and the New Zealand Parliament could affect or amend the meaning of the statute through its own Acts Interpretation Act. It is an expectation that continues to extend as well to other legislation which has a common origin even when it has taken a purely local form and is subject to the local interpretation law, such as the Sale of Goods Act 1908 or the Partnership Act 1908 or, to take a different kind of example, the Ombudsmen Act 1975. The Acts Interpretation Act does of course apply to those statutes. The other "Imperial statutes" are part of New Zealand law. Should they be subject to rules and principles relating to legislation which differ from those which apply generally to other New Zealand enactments? And if different statutory rules are to apply what are those rules? Parliament has applied the New Zealand interpretation legislation to particular statutes such as the Fugitive Offenders Act 1881 and the Wills Acts of 1837 and 1852. That application of the same set of rules and principles would not however deny that they will, as appropriate, be interpreted by reference to the context from which they arose. In that they would not differ from other categories of legislation such as that which codifies or gives effect to treaties or creates criminal offences or imposes taxes or confers powers on public bodies. The point just made reflects a basic limit in Interpretation Acts. While they might in a general way apply to all enactments they are not the totality of the relevant interpretation law. The horizontal 1924 Act has, if you like, a varying application to the different vertical columns of particular statutes and categories of statutes.

9. In its report on Imperial Legislation in force in New Zealand (NZLC R1) para. 34 and draft Imperial Legislation Bill cl.3(3) the Commission proposed that the Acts Interpretation Act 1924 should apply, with necessary modifications, to Imperial legislation which is part of the law of New Zealand. See also para. 104 of that Report.

Question 1.1

Is there any reason why the Acts Interpretation Act should not apply to all Imperial legislation which is part of the law of New Zealand (as well, of course, as to all other primary legislation)?

Subordinate legislation and other acts done under authority

10. The Acts Interpretation Act applies in general to all rules and regulations made under New Zealand Acts (s.4, "Act"). "Regulations" is defined as regulations made by the Governor-General in Council (s.4) and is accordingly narrower than the definition to be found in

the Regulations Act 1936 s.2 (see further Paras. 116–118). "Rules" is not defined. The Act also applies to "rules, regulations, bylaws, and other acts of authority made or done by the Governor-General or by any other person in New Zealand under any Imperial Act or under any rule or order of Her Majesty in Council in the same way as it applies to rules, regulations, bylaws, and other acts of authority made or done under an Act of the General Assembly of New Zealand" (Statutes Amendment Act 1936 s.3). Because the application to things done under New Zealand Acts is limited in general to rules and regulations, with a narrow definition of regulations, this provision does not have as wide an effect as at first appears. It does however help suggest questions about the scope of application of the Act.

Question 1.2

To what categories of subordinate legislation and other acts done under authority should the Acts Interpretation Act apply? Consider for instance bylaws, codes of practice, notices of one kind or another (such as those under the Fisheries Act 1983) and proclamations of various kinds.

This question relates to the question currently being considered about the meaning of "regulations" for the purposes of a revised Regulations Act. Is there a line that can conveniently be drawn between legislative and non legislative instruments? We would be grateful for any relevant experience and for your thoughts about the consequence of different categories of documents being subject to the Acts Interpretation Act. Is this a matter better approached in the context of the Regulations Act?

Question 1.3

Should the Acts Interpretation Act (or any part of it) apply to rules of law which are not enacted, such as those made under the prerogative (or parts of it) or common law powers (or parts of them)? The issue is raised by s.27 of the Finance Act (No. 2) 1952 and s.25B of the 1924 Act (as enacted in 1979) relating to the powers, non statutory as well as statutory, of the Attorney-General and Solicitor-General. Those provisions are one indication of the fact that the 1924 Act is also an Act conferring governmental powers.

THE NEGATIVE PROVISIONS

11. Paragraphs 7–10 are about the **positive** application of the Acts Interpretation Act. The second aspect raised at the beginning of Para. 7 is the negative side – the **limits on the application of the legislation.** The Acts Interpretation Act or the particular statute itself might exclude the operation of the Act. So of course might the common law. The principles about the supremacy of Parliament

(especially the effect of later enactments of Parliament) and about the interaction of general and particular law will indicate that in some circumstances, even without any express language in the Acts Interpretation Act or the particular statute, the provisions of the Acts Interpretation Act are not to apply. A spectacular example is provided by the Acts Interpretation Act itself. It provides that no Act affects the rights of the Crown unless it is **expressly stated therein** that the Crown is bound thereby. The Acts Interpretation Act contains no such provision, nor for that matter does the Crown Proceedings Act 1950 which, however, **itself** purports to make the Acts Interpretation Act applicable to the Crown. But both plainly bound the Crown from their inception (see Para. 101).

12. The Acts Interpretation Act uses a great variety of formulae to indicate the limitation of its scope. The formulae relate to two matters –

(1) The different elements of the other statute:

(a) particular words or expressions, or particular definitions or interpretations in the other statute (e.g. ss. 2, 4 (introduction, "land")); or

(b) the context of the other statute (e.g. ss. 2, 4 (introduction, "territorial sea"), 18, 20, 21(1), 25); or

(c) the nature and object of the power conferred by the other statute (s.25(h)); or

(d) the intent and object of the other statute (s.2); or

(e) more generally, the "intention" of the other statute (e.g. ss. 6(1), 7, 11(2), 12, 25(b),(c), 26); or

(f) some combination of the above (as in s.2 which is the provision about the general application of the Act).

(2) The different ways in which those elements of the legislation in question show that they exclude the principles and rules of the Acts Interpretation Act. If the element (the word, the context) is –

inconsistent with, or
excludes, or
restricts, or
specially provides [otherwise than], or
expressly states or mentions [otherwise than], or
appears contrary to or different from, or
manifests a different construction [from]

the general principle or rule set out in the 1924 Act, then that general principle or rule does not apply.

13. The courts have made it clear that for one reason or another (including principles of Parliamentary supremacy) "specially" and "express" cannot mean exactly what they say. It is enough if Parliament makes its intention manifest in the particular statute, because "[t]he Legislature cannot bind itself as to how it shall and how it shall not express itself in the future". This is a comment about s.5(k) of the 1924 Act, a provision which has "the weakness inherent in all anticipatory legislation": In re Buckingham [1922] NZLR 771, 773. See further Paras. 101–103.

14. An Acts Interpretation Act in other words is essentially relative. Particular statutes or provisions might exclude the application of its general provisions even if it did not itself allow for that possibility. It is nevertheless common for interpretation statutes to make their relative character express (e.g. Commonwealth draft, cls. 3 and 38; Victorian Act, ss. 4, 37, 38, 40; and the use of "unless the contrary intention appears" in ss. 5–8, 10–14, 16–19 and 23 of the U.K. Act and "unless it is otherwise specifically stated" in s.9).

Question 1.4

Should the Act contain express language which indicates the circumstances in which it is not to apply? If so, should the provisions be fewer and more consistent in their wording? Would it be better to avoid the presumption created by a requirement for "express" or "special" provision excluding the application of the Act? Would a single provision at the outset of the Act be enough?

II THE COMMENCEMENT OF LEGISLATION

THE DATE OF COMMENCEMENT

15. Parliament can of course fix any date for the commencement of an Act or any part of an Act. It can provide different commencement dates for different parts of the Act, and it can authorise others (usually, perhaps invariably, the Governor-General in Council) to determine the commencement date of an Act or any part of it. The word "commencement" is defined in the Acts Interpretation Act 1924 s.4, as follows:

> "Commencement" when used in reference to an Act means the time at which the Act referred to comes into operation.

Given that "Act" in the normal case includes regulations, this definition also applies to regulations.

16. If Parliament, or the Governor-General in Council in the case of regulations, makes no express provision for commencement, the date of assent is the date of commencement: s.10A(1). The time of commencement is the beginning of the day of commencement: s.11(1) (which applies only to instruments which themselves specify the day), and *Tomlinson* v. *Bullock* (1879) 4 QBD 230, 232. It probably should not be necessary to depend on a common law rule in this respect. A commencement provision which provides for the Act or any provision of it to come into force later, itself comes into force on the date of assent: s.10A(2). And if part of the Act is to come or is deemed to have come into force on a day other than the day of assent, the remainder comes into force on the date of assent: s.10A(3).

17. If an Act or any provision of it is to take effect "from" a certain day, it takes effect, unless a contrary intention appears, immediately on the commencement of the next day: s.11(2).

18. Certain powers (for instance to make appointments, to make regulations, and to prescribe forms) can in general be exercised in the period between the passing of the Act and before its coming into operation; instruments made under those powers do not in general come into operation until the Act does: s.12 (see Para. 198).

19. Some terminological points will be addressed in new legislation. Consider -

> (1) "shall be taken" (s.10(2)) and "shall be deemed" (s.10A(2) and (3));

(2) "come into operation" (ss. 4, 11(1), 12), "come into force" (s.10A(2) and (3)) and "take effect" (s.11(2)): see also "bring into operation" (s.12) ("come into force" is the phrase used in commencement provisions of Acts);

(3) "assent" (ss. 10, 10A(1), (2), (3)) and "passing" (s.12);

(4) The "Act" as a whole (ss. 10, 10A(1), 11(1), 12) or "the Act" or "any portion thereof" (s.10A(2)) or "provisions" thereof (ss. 10A(3), 11(2));

(5) The Act alone (previous list); or Act, Order in Council, regulations (s.11(1)).

The second group of terms in that list relates to a matter taken up in the next paragraph and the next section of this paper: the possible difference between the date of commencement or force or operation on the one side, and, on the other, the temporal effect of the legislation. The fourth group might have important consequences: if only part of an Act is to come into force later (the rest coming into force on passing) can the powers to make decisions in the interim be used in respect of that part? (Section 12. See Paras. 18 and 198.) The distinction between part of an Act and the whole Act arises in other sections of the Act. Consider for example ss. 20 and 20A which deal with repeals of –

an Act wholly or in part
any enactment
any provisions of an Act
any Act
an Act (and in addition, expressly, the revocation of a regulation)
any provision (by Act, Order in Council, notice, regulations, or rules)

and s.21 which refers to any repealed Act. In *Ministry of Transport* v. *Hamilton*, Wanganui Registry M73/84, Eichelbaum J. held that s.21 applies only when the whole Act and not simply a provision of it is repealed. As indicated, the Act/regulation issue also arises from these terminological differences. These matters have also to be addressed in a comprehensive way. (See further Paras. 51 and 92.) That is so as well in the case of the last example of contrasting terminology listed above, the application of the Act to instruments other than Acts.

20. The date of commencement is one thing. The effective date of operation of the legislation might be another. The legislation might have effect in respect of transactions in the past, see e.g. Finance Act 1984, ss. 1(2), 8 and 9 or the Rangitikei County (Rating Validation) Act 1984. While this matter is considered under the next

heading relating to the temporal effect of legislation, a word or two is relevant here.

21. Retroactivity in the criminal area is denied by particular provisions (see e.g. Para. 71). No doubt there is strong reason for this denial and the more general proposition that the law should be prospective. Those subject to law cannot take steps to ensure that they comply with law which is not yet promulgated and accordingly is not known to them. But some legislation can of course be completely benign in its retroactive effects and impose no obligations on individuals (although the position of the State might be prejudiced): consider retrospective State salary or benefit increases. And much other legislation deals with situations and relationships which continue over a long period: consider changes in family law and, some would say, in taxation arrangements. But as indicated, these matters are pursued later. For the moment they are mentioned to put the commencement date issue in context.

THE OPPORTUNITY FOR COMPLIANCE

22. The point about the opportunity for compliance presents a particular question about commencement which can be raised here. The question is highlighted by the practice since 1980 with regulations – that in general they have effect two weeks after they are made – and the Victorian and Western Australian Interpretation Act provisions that Acts come into operation 28 days after assent unless they otherwise provide.

Question 2.1

> Should the general rule (included in the Interpretation Act) or the general practice (included in each particular statute unless there is good reason to the contrary) be that Acts and regulations come into force a specified period, say one month, after their passing?

23. The Acts Interpretation Act 1924 s.13 provides that it is not necessary to gazette Acts of the General Assembly or of Parliament. This appears to be a case in which "Act" does not include regulations, given the reference to the General Assembly and Parliament and the special rules in the Regulations Act relating to the publication of regulations. The provision can be traced back to the Interpretation Act 1878 s.13:

> Section 60 of the Constitution Act is hereby repealed and it shall not be necessary to gazette the Acts passed by the General Assembly in any session thereof ...

The provision goes on to require that such Acts be procurable by purchase, a matter dealt with in Paras. 83–84. Before 1878, s.60 of the Constitution Act read –

> The Governor shall cause every Act ... which he shall have assented to ... to be printed in the Government Gazette for general information, and such publication ... shall be deemed in law the promulgation of the same.

The Regulations Act 1936 s.6 makes equivalent to the requirement of publication of regulations in the Gazette a notice in the Gazette of the making of the regulations and of the place where copies can be purchased. Before the establishment by that Act of the Statutory Regulations series, particular legislation often required regulations to be published in the Gazette.

24. There would appear to have been no need for the provision made by s.13 so far as it obviates the need to gazette Acts passed after 1878. The question of gazetting regulations is probably better dealt with in the context of the review of the Regulations Act.

THE COMMENCEMENT OF SUBSTITUTED LEGISLATION

25. Section 20 (about repeals) contains a provision (para. (c)) which is really about commencement and which can conveniently be mentioned here.

> s.20(c) Whenever any provisions of an Act are repealed, and other provisions are substituted in their place, the provisions so repealed remain in force until the substituted provisions come into operation.

The standard formula in amending Acts provides for the amendment of the principal Act by repealing or omitting the old provision and substituting the new. Such Acts commence in operation in accordance with the rules already discussed. Those rules and the express provisions of the amending Acts appear to make para.(c) unnecessary.

Question 2.2

Is there any reason to retain s.20(c)?

III TEMPORAL APPLICATION OF LEGISLATION: RETROACTIVITY, REPEALS, TRANSITION

WHICH BODY OF LAW SHOULD APPLY – THE OLD OR THE NEW?

26. The provisions which have just been considered determine the time at which legislation becomes part of the law of New Zealand. As noted in the discussion of that matter (Paras. 20–21), there is a related but separate question – what is the temporal application of the legislation in issue? Which body of law, the old or the new, applies to which periods of time and the events occurring within them? This matter is often considered under two separate headings –

- the application or not of **new** legislation to past events and situations (retroactive application)
- the continuing effect or not of the **old** legislation (the effect of repeal)

We shall see that the two headings do not comprehend all relevant situations. They are related in practice since in most cases the new legislation will replace or amend the old legislation. They are also related in principle since, for instance, considerations of justice or fairness may dictate that rights established under the old law should not be affected by the new.

27. The whole matter is important in policy terms and complex in its legal answers, at least under the present law. The following discussion first sketches some situations to suggest the issues; second, mentions some relevant principles; and third, discusses aspects of the present law. In a particular case the law may be found in the new statute, in the Acts Interpretation Act 1924 or in the common law. (See also the provisions about criminal liability mentioned in Para. 71.) In some cases more than one source of law may apply because, for instance, the transitional provision in the particular statute preserves the operation of the 1924 Act, and that Act might not extend to the whole situation.

SOME SITUATIONS

28. *Criminal law*

(1) An action was not criminal in 1986. Legislation was enacted in 1987 making such actions criminal.

(2) An action was criminal in 1986. Legislation was enacted in 1987 removing the crime from the statute book.

(3) Penalties were increased or decreased after the offence was committed.

In each case the question is whether the new law applies to the earlier situation. The question might be more complex if the case had been dealt with under the old law and, after the change, the case is heard on appeal or is reheard.

29. *Civil obligations*

(1) Contracts legislation may make particular types of contract illegal.

(2) New matrimonial property legislation may change the basic rules for the distribution of property among spouses on the dissolution of marriage.

The question in each case is whether those sets of legislation will apply to contracts entered into before its enactment or to spouses married earlier.

30. *Court Judgments*

The courts have made a ruling on a matter of law. Legislation is then enacted to alter that law as so declared.

The question in each case is whether that new legislation affects the judgment, appeals from it, pending proceedings, or the persons who might claim in a general way to benefit from the law as stated in the judgment.

31. *Courts*

(1) A court is replaced by another court.

(2) Rights of appeal are altered.

(3) The jurisdiction of an existing court is altered, for instance by increasing or decreasing the amount that can be claimed or transferring a category of business from one court to another.

(4) The composition of a court is changed, for instance by providing, or not, for juries, lay members, or a multi-judge panel.

The question in each case is whether the new arrangements apply to matters arising earlier or to proceedings which are already in train.

32. *Procedure and evidence*

A new set of court rules is introduced. They have impact on the prospects of litigants. Consider for instance wider rights of discovery or rights to have evidence heard on appeal, rather than the matter being dealt with on the notes of evidence. Or consider changes in limitation legislation.

The question is whether the new rules apply to matters which arose before the change, or to proceedings which have already been initiated.

33. *Repealed legislation or replaced law*

The new legislation repeals an Act which had itself repealed or amended earlier legislation or replaced a common law rule.

The question is whether that earlier legislation or law is revived by the repeal of the legislation which superseded it.

34. *Legislative reference*

The new legislation amends or repeals an Act or a provision of an Act which is referred to in other legislation which continues in force.

The question is whether the old or the new legislation, or neither, will be relevant to the operation of that other legislation.

35. *Official things done under repealed legislation*

Regulations, appointments, proclamations have been made under an Act which has been amended or replaced.

The question is whether those things will continue to have legal effect under the amended or new legislation.

36. *Benign conferral of rights*

Legislation is enacted increasing the levels of benefits or State salaries.

The question is whether the increases begin at a date before the passing of the law.

37. *Existing rights, interests, expectations*

This is a very large category. It is perhaps better taken up under the next heading.

SOME PRINCIPLES

38. *Effectiveness.* Much of the law works because the people subject to it know what it requires and organise their actions in accordance with it. It would not be sensible, to take an example, to have the whole body of the law relating to the use of roads determined after the event – speed, the right of way at intersections, licensing, the duty to drive on the left or the right side of the road. The law is not usefully made known unless it has been stated before the time when it needs to be known.

39. *Justice.* It may be unjust as well as ineffective to apply law to situations in the past. Criminal liability is the easiest case. No one should be subject to criminal penalty for something that was not known to be unlawful at the time. The International Covenant on Civil and Political Rights promulgates this principle for New Zealand and, as mentioned in Para. 71, it has been carried over into particular provisions of the criminal law. An aspect of the principle is the certainty of the criminal law. Justice also probably provides a standard relevant to the taking away of a judgment already delivered in a litigant's favour. The rights of that litigant to a fair trial have in effect been abrogated, after the event. But what of other rights or interests? Consider rights or interests –

- under a contract
- in tort (say to damages for negligence or defamation)
- compensation (say under the Public Works Act or Accident Compensation Act)
- within the family in respect of support, property, and dissolution of marriage
- as a shareholder or director or creditor of a company
- under a legal process which has begun
- under town planning legislation
- under tax or superannuation legislation

The use of the word "rights" in this list might be thought to beg the question. "Interests" or "expectations" or even "hopes" might be more appropriate in some of the cases. These cases can also present a conflict between the reasonable expectations of those subject to the law and the responsibility of the Government in meeting the public interest to promote the development and reform of the law.

40. *Reasonable expectations.* Individuals may enter into a contract (say for a tenancy), or make investments (say in oil exploration) on the basis that the tenancy law or taxation regime will have a particular impact on the arrangement. This consideration applies to conscious voluntary acts, such as contracts, rather than to

involuntary ones such as some tortious and compensation situations.

41. *Responsibilities of government.* But the Government may be of the view that the balance of the tenancy law or the overall taxation system requires adjustment because of wider national interests. Family law, it might consider, has to be adjusted to give sole or primary weight to the breakdown of marriage, not to fault; to the welfare of the child, and to the equal rights of women. New procedures such as conciliation and mediation, or new courts such as the Family Court, might be established. Such changes, typically, apply to the whole community in the affected categories – in this case all families – and not simply to those who marry after the law is altered.

42. *Effective administration.* Institutional and procedural changes, such as the establishment of new courts and new hearing processes, may be impossible or difficult to introduce piecemeal with, for instance, one court still existing for older cases and a new court for newer ones.

43. The five factors just mentioned are not peculiar to legislative change. They arise as well when the courts develop the law. Thus when the House of Lords in 1966 said that it would depart from its earlier decisions where it appeared to be right to do so, it stressed the importance of a degree of certainty that comes from the practice of precedent –

> Their lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.
> Their lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
> In this connexion they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law. [1966] 3 All ER 77.

44. Legislation may facilitate judicial clarification of the law while protecting the rights of litigants. Consider the United Kingdom legislation allowing the prosecutor, following an acquittal,

an advisory appeal on an issue of law, the appeal having no effect on the acquittal of the defendant (Criminal Justice Act 1972 s.36). Declaratory judgment proceedings can draw the same line.

THE LAW

45. As already indicated, particular statutes sometimes establish which body of law applies in a particular situation (often in **application** provisions as well as in **repeal and savings** ones; the commencement provisions may have a wider significance as well). Provisions of this kind appear to be frequent in principal Acts, raising questions about the general provisions in the Acts Interpretation Act. The provisions in question have to be examined to see –

(1) to what extent they duplicate the 1924 provisions;

(2) how they mesh with those provisions;

(3) whether they suggest issues which could be resolved in those provisions; and

(4) the issues which should be routinely addressed in the preparation of particular Acts.

We will be very grateful if those who are responsible for or frequent users of particular statutes address these matters by reference to those statutes.

46. If there are no relevant particular provisions (and even if there are, for they may not be comprehensive and often indeed they expressly save the operation of the Acts Interpretation Act 1924), the general law to be found in the Acts Interpretation Act or in the common law or both must be resorted to. The common law may be relevant because the 1924 provision is not applicable at all to the situation or because it has only a partial application. It is also noticeable that the courts sometimes treat a matter under both the common law and the interpretation legislation without making it clear which is the governing law.

47. The provisions in the Acts Interpretation Act have developed and been added to for well over 100 years. Along with the related common law rules they can be divided, at least for present purposes, into the following groups –

(1) Those dealing with the effect of repeal or amendment of an Act on references to that Act in existing legislation (Paras. 53–57)

(2) Those dealing with the effect of the new

legislation on things no longer in force or existing (Paras. 58–60)

(3) Those dealing with the effect of the new legislation and the old on things which are in progress under the old (Paras. 61–64)

(4) Those dealing with the effect of the new legislation and the old (if any) on things which are established (Paras. 65–79)

48. There are three variables in each group –

(a) the legislative act: a brand new statute, a statute which repeals or amends another, a statute which impliedly repeals or amends another, the expiry of a statute, and the same eventualities in respect of regulations;

(b) the thing that might or might not be affected by that legislative act: rights, interests, statutory references, processes;

(c) the consequence of the legislative act for that thing: the thing is unaffected, it continues under the new legislation, it no longer exists.

49. So far as (a) is concerned, the 1924 Act does not deal with the first case – a brand new Act where none stood before. It leaves that to the particular Act and the common law. The 1924 Act expressly deals with expiry in just one context and that is discussed in Paras. 62–63. It deals variously in a number of contexts with the issues of regulations as well as Acts, and repeal in part as well as total repeal. Accordingly it is convenient to consider those two matters now.

50. Paragraph (e) of s.20 and s.20A as a whole explicitly extend, although in different terms, to instruments other than Acts. It may be that the remaining provisions of ss. 20 and 22 would apply as well to regulations, given the definition of "Act" in s.4 of the Acts Interpretation Act and the direction in s.28 to apply the Act in interpreting its own provisions. On the other hand, it may be that the word "repeal" used in s.20 makes that inapt since the word repeal is not used for regulations, the standard usage being "revoke", as s.20A indicates. And the specific references to other instruments in ss. 20(e) and 20A also suggest the narrower meaning.

51. The other technical issue raised under this heading is whether the repeal must be of the whole instrument, whether an Act or a regulation, or whether a partial repeal or amendment will make the provisions operative. Section 20 deals inconsistently with this matter. The introductory words to s.20 and its paragraphs (d), (e)

and (f), along with s.21(1) and s.22, appear to require repeal of the **whole** act. Paragraphs (a) and (c) of s.20 and s.20A appear to deal with the repeal of **part as well as** the whole of the instrument; and that wider scope also seems to follow from the use of "enactment" in paragraphs (b), (g) and (h) of s.20 (but do they extend to an amendment of an enactment?). It is not clear, to return to the first issue, whether "enactment" includes a regulation. The literal argument would be that it does not since regulations are not enacted. The word does however appear to be adequate to cover the case of the whole or part of the legal instrument being repealed.

52. The following discussion of the four situations referred to in Para. 47 relates principally to that part of the general law found in the 1924 Act. It is perhaps worth noting again that the particular provisions in the new statute may often be decisive. They are as well very common. As indicated, our impression – yet to be fully tested – is that most principal statutes contain significant repeal, savings and transition provisions. And the common law undoubtedly still has room to operate, for example where there was no earlier statute.

REFERENCES TO LEGISLATION WHICH HAS BEEN REPEALED OR AMENDED

53. Sections 18 and 21 of the Acts Interpretation Act 1924 deal with references in one Act to an Act which has subsequently been repealed or amended.

> s.18 **Citation of Act includes citation of amendments** – A reference to or citation of any Act includes therein the citation of all subsequent enactments passed in amendment or substitution of the Act so referred to or cited, unless it is otherwise manifested by the context.
>
> s.21 **Reference to repealed Act in unrepealed Act** – (1) In every unrepealed Act in which reference is made to any repealed Act such reference shall be construed as referring to any subsequent enactment passed in substitution for such repealed Act, unless it is otherwise manifested by the context.
>
> (2) All the provisions of such subsequent enactment, and of any enactment amending the same, shall, as regards any subsequent transaction, matter, or thing, be deemed to have been applied, incorporated, or referred to in the unrepealed Act.

Both sections recognise that references to Acts may become literally inapt if the Acts referred to are repealed. They provide

in different terms for the substitution of a reference to the later legislation.

54. The scope of the two sections differs in that s.18 deals with citations of as well as references to Acts, and its application is not expressly limited to references (or citations) **included** in Acts. Given the scope of the Acts Interpretation Act (see s.2) the second difference may be inconsequential; but compare the apparent or express scope of ss. 14 to 17. The sections raise a wide question (relevant to Part I) about the scope of the Act: in what senses if at all should it apply to documents other than Acts and regulations? It is difficult to see that any differentiation is made by the mention in s.18 of "citation" as well as "reference". Both sections appear to apply to regulations, given the definition of Act in s.4. If that was not clear it was made so by s.2 of the Statutes Amendment Act 1942. And both specifically allow for the possibility that the context might manifest that the rule they state should not be applied, thereby repeating, presumably unnecessarily, the general proposition to that effect in s.2.

55. The sections also have it in common that they apply to a reference to "any Act" and not, expressly at least, to a reference to any part of an Act or to any enactment. It has been held that a reference to a section of an Act does not fall within the scope of s.21 and accordingly the replacement of one section of an Act by another does not benefit from the provision (see Para. 19).

56. Section 18 covers the case of "all subsequent enactments passed in amendment or substitution of the Act so referred to", while s.21 is about "any subsequent enactment passed in substitution for" the repealed Act. The first, covering both substitution and amendment of the Act referred to by one or more enactments, appears to include the second and to be wider: it covers the case where a number of Acts replace an earlier one, and it extends to amendments (but s.5(c) appears already to cover that case). On this basis it is difficult to see that both s.18 and s.21 are needed. The 1942 provision relating to regulations (Para. 54) suggests they are not.

57. Section 20(b) also relates to this matter of the reference in one statute to another –

> s.20(b) The repeal of any enactment shall not affect any Act in which such enactment has been applied, incorporated, or referred to:

It is not clear how this provision is to operate either in its own terms or in relation to ss. 18 and 21. First, its scope is potentially wider since it relates to repeals of "any enactment", not just of "an Act", and accordingly extends to **partial** repeals. But, second, what is the

consequence of saying that the repeal shall not *affect* the Act in which the repealed enactment has been applied? Does that mean that the repealed Act continues in that context to have its original effect? But in at least some cases that will not be feasible. The repealed law will no longer be capable of operation. And if, in terms of the particular provision, continued operation of the old enactment is feasible, how is it to stand alongside the substitution of the new which ss. 18 and 21 in general provide for?

Question 3.1:

> What should be the substance of any provision about the effect of references to legislation which has subsequently been repealed or amended?

EFFECT OF NEW LEGISLATION ON THINGS NO LONGER IN FORCE OR EXISTING

58. Two main provisions of the Act regulate the effect (or really the lack of effect) of new legislation on things no longer in force or existing. Section 20 includes the following provisions –

> s.20(a) The repeal of an Act wholly or in part shall not ... revive any enactment previously repealed, unless words be added reviving such last-mentioned enactment:
>
> s.20(f) The repeal of an Act shall not revive anything not in force or existing at the time when the repeal takes effect:

Section 20(e)(i) and (iv), discussed later (Paras. 73–79), might also be brought under this head, the line between things no longer in force and things established not being a clear one. Paragraph (f) of s.20 appears to be the more general provision and to include para. (a) in that a repealed enactment is something "not in force or existing" at the time of the later repeal. But para. (a) within its narrower substantive area might have wider application since it expressly includes partial as well as complete repeals. Its final phrase does not of course make any difference given the expressly relative character of the Acts Interpretation Act and the supremacy of Parliament.

59. Paragraph (a) has the effect of reversing the alleged common law rule that might have allowed the revival of statutes repealed by a statute which is subsequently itself repealed. The question might be asked whether there can be any doubt at this time about the proposition which para. (a) states.

60. The broader question which arises from the provisions – especially para. (f) – is whether they are sufficiently

included within the provisions discussed later that protect things which are established or exist. To say that something does not exist is also to make a statement about an existing situation.

Question 3.2:
Should paras. (a) and (f) of s.20 be retained?

EFFECT OF NEW LEGISLATION ON THINGS IN PROGESS

61. Section 20(g), part of s.20(h) and s.22 of the Acts Interpretation Act 1924 regulate the effect of new and old legislation on things which are in progress under the old. This is a more immediate aspect of the remaining category, referred to in Para. 47, the effect on things which are established or exist – more immediate in the sense that the things in progress at the time of repeal are, or relate to, things which existed before the repeal.

> s.20(g) Any enactment, notwithstanding the repeal thereof, shall continue and be in force for the purpose of continuing and perfecting under such repealed enactment any act, matter, or thing, or any proceedings commenced or in progress thereunder, if there be no substituted enactments adapted to the completion thereof:
>
> s.20(h) Notwithstanding the repeal or expiry of any enactment, every power and act which may be necessary to complete, carry out, or compel the performance of any subsisting contract or agreement lawfully made, entered into, or commenced under such enactment may be exercised and performed in all respects as if the said enactment continued in force; ...
>
> s.22 **Pending judicial proceedings not affected by expiration of Act** – The expiration of an Act shall not affect any judicial proceedings previously commenced under that Act, but all such proceedings may be continued and everything in relation thereto be done in all respects as if the Act continued in force.

See also the final part of s.20(e)(iii) set out in Para. 73.

62. The first provision (s.20(g)) applies to a wider range of objects, not just to contracts (s.20(h)) or judicial proceedings (s.22). With one exception it appears to include the contract provision within its scope (powers of completing, carrying out and compelling the performance of contracts appear to be no wider than powers to continue and perfect a contract). The exception is that para. (h) includes, in addition to repeal, the expiry of any

enactment. "Expiry" of an enactment appears to mean, especially in the context of the use of "repeal", coming to an end in or by its own terms as opposed to coming to an end by an external action – that is repeal by another enactment. See for example Agriculture (Emergency Powers) Act 1934 s.27(6), Primary Products Marketing Act 1953 s.4(1), War Pensions Act 1954 s.75C(4) and (5), Social Security Act 1964 s.61H(4) and (5), Customs Act 1966 s.131(2), Stabilisation of Remuneration Act 1971 s.1(4), Official Information Act 1982 s.53.

63. If "expiry" (or "expiration") does have the meaning suggested, then s.22 probably has a very limited application in practice. The extent of s.20(h) compared with s.20(g) is limited in the same way. The question which arises is whether s.20(h) and s.22 should be brought within the scope of s.20(g) by extending that provision to apply on expiry as well as on repeal.

64. The more general proposition included in para. (g) of s.20 recognises – probably unnecessarily – its relative character. It is to be displaced by substituted provisions. Once again regard must be had to the particular transitional provisions frequently included in legislation. They often provide for pending matters to be carried forward under the new legislation.

Question 3.3:

What particular provisions for pending proceedings are included in legislation in which you have a special interest for pending proceedings? What significance do those provisions have for the general provisions of ss. 20(g), 20(h) and 22 and the final part of s.20(e)(iii)? Should the provisions be consolidated as suggested in Para. 63 (see also Para. 70 and question 3.6)?

EFFECT OF NEW LEGISLATION ON THINGS WHICH ARE ESTABLISHED

65. The most important provisions in this set are about the effect of new legislation and old (if any) on things which are established. The provisions, contained in ss. 20 and 20A, conform with the common law presumption that new statutes do not have retroactive operation. The relevant provisions concern –

(1) savings made in the statute being repealed (s.20(a)) (Para. 66);

(2) official actions (such as appointments and regulations) done under the repealed Act and possibly relevant to the new statute (s.20(d) and s.20A) (Paras. 67–69);

(3) offences committed and penalties incurred before the repeal (s.20(h) and the final part of s.20(e)(vii)) (Paras. 70–72); and

(4) the general position of things done and still existing (s.20(e)) (Paras. 73–79).

Savings made in the repealed Act

66. Section 20(a) reads in part as follows –

> s.20(a) The repeal of an Act wholly or in part shall not prevent the effect of any saving clause therein ...

The remainder of the paragraph is discussed in Paras. 58 and 59. This is a particular example of the more general proposition, to be found in para. (e) of s.20 for instance, that any established right or existing status is not affected, although that paragraph requires repeal of the **whole** Act and, unlike para. (a), does not expressly include a partial repeal. The United Kingdom, draft Commonwealth and Victorian statutes contain no such particular provision. Do we require it here? What is the relevant experience of it? There is some reference to it in *C.I.R.* v. *Parson* [1968] NZLR 375.

Question 3.4:

Should that part of s.20(a) dealing with savings provisions in repealed Acts be retained?

Effect of new legislation on official actions under repealed legislation

67. Sections 20(d) and 20A deal with **the effect of new legislation on official actions (such as appointments and regulations) done under the repealed legislation** –

> s.20(d) Where an Act consolidating the law on any subject repeals any Act relating to that subject and contains provisions substantially corresponding to those of the repealed Act for the constitution of districts or offices, the appointment of officers, the making or issuing of Proclamations, orders, warrants, certificates, rules, regulations, bylaws, or for other similar exercise of statutory powers, all such powers duly exercised under the repealed Acts and in force at the time of the repeal shall, in so far as they are not inconsistent with the repealing Act, continue with the like operation and effect as if they had been exercised under the corresponding provisions of the repealing Act:

> s.20A. **Savings** – (1) Without limiting any other provision of this Act, it is hereby declared that the repeal or revocation of any provision by any Act, Order in Council, notice, regulations, or rules shall not affect any document made or any thing whatsoever done under the provision so repealed or revoked or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal or revocation and could have been made or done under that Act, Order in Council, or notice, or under those regulations or rules, shall continue and have effect as if it had been made or done under the corresponding provision of that Act, Order in Council, or notice, or of those regulations or rules, and as if that provision had been in force when the document was made or the thing was done.
>
> (2) Where before the commencement of this section any provision has been repealed or revoked by any Act, Order in Council, notice, regulations, or rules, any document made or any thing whatsoever done under the provision so repealed or revoked or under any corresponding former provision that would have continued and had effect if this section had been in force at the time of the repeal or revocation shall be deemed to have so continued and had effect:
>
> Provided that nothing in this subsection shall affect the rights of the parties under any judgment given in any Court before the commencement of this subsection, or under any judgment given on appeal from any such judgment, whether the appeal is commenced before or after the commencement of this subsection.

Section 20A was enacted in 1960, and subs.(2) added in 1962 to make it clear, contrary to a magistrate's ruling (according to Hansard), that it was retroactive; but see ss. 2 and 5(c) of the 1924 Act.

68. Essentially the two sections provide for the continued force under the new legislation of the things done under the earlier legislation. In that they conform with the approach of the more general provisions of para. (e) of s.20. The provisions reverse the common law rule that when a statutory provision under which subordinate legislation is made is repealed the subordinate legislation ceases to have validity unless the repealing Act contains a saving provision, *Watson* v. *Winch* [1916] 1 KB 688. They are however different from one another in detail:

(1) *The repeal.* Section 20(d) requires the repeal of one Act by a consolidating Act. Section 20A appears to be

wider in two respects: it expressly extends (i) to instruments other than Acts and (ii) to the repeal of any provision and not just an Act as a whole.

(2) *The things to be continued.* The later provision, s.20A, is more general in its wording and perhaps in its scope: "any document made or any thing whatsoever done" (including done under any corresponding former provision). That is to be compared with the more specific terms of s.20(d), "the constitution of districts or offices, the appointment of officers, the making ... of ... regulations ... or ... other similar exercise of statutory powers". Paragraph (d) speaks of the continuation of the "powers duly exercised", but that must be read in the context as 'the continuation of **the due exercise** of the power'.

(3) *The condition for the continuation.* Paragraph (d) is easier to satisfy. It provides for continued effect insofar as the powers (or the due exercise of the powers) substantially correspond to those of the repealed Act and those powers are "not inconsistent with the" new Act: see *Ministry of Transport* v. *Hika* [1984] 2 NZLR 385. Section 20A by contrast requires not just corresponding provisions but also that the document or thing "could have been made or done under" the new provision. The "corresponding" requirement is discussed in *Winter* v. *Ministry of Transport* [1972] NZLR 539, 541.

69. The provisions cover essentially the same ground. They deal with a recurring practical matter with what appears to be the sensible result. Again many (but not all) particular statutes deal with the matter. It would be useful to know of the relevant practice and experience. The United Kingdom Act contains a provision, new in 1979, included so that particular provisions need not always be enacted:

> Where an Act repeals and re-enacts, with or without modification, a previous enactment then, unless the contrary intention appears, –
>
> ...
> (b) in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision.

Interpretation Act 1979 s.17(2)(b). The Victorian provision is very close in its wording, s.16(b).

Question 3.5:

Given the particular provisions in legislation, are provisions like ss. 20(d) and 20A needed? If they are

needed, could they be consolidated into a single provision? How might it be worded?

Offences committed and penalties incurred before the repeal

70. The final parts of s.20(h) and of s.20(e)(vii) read as follows –

> s.20(h) ... all offences committed, or penalties or forfeitures incurred, before [the] repeal or expiry [of an enactment] may be prosecuted, punished, and enforced as if such enactment had not been repealed or had not expired.
>
> s.20(e) The repeal of an Act or the revocation of a bylaw, rule or regulation at any time shall not ...
>
> (vii) ... prevent any such Act, bylaw, or regulation from being put in force for the collection or recovery of any such revenues [of the Crown], charges [thereupon], duties, taxes, fees, fines, penalties, or forfeitures, or otherwise in relation thereto:

These provisions can be related to the category considered in Paras. 61–64: the effect of repeal on things which are in progress under the old legislation. Some situations will fall under the scope of more than one of the provisions and it is likely that the provisions could be consolidated (see also question 3.3).

71. So far as criminal offences are concerned, the effect of the provisions has been substantially altered by s.4 of the Criminal Justice Act 1985 (first enacted in 1980; see also s.10A of the Crimes Act 1961); s.4, following article 15(1) of the International Covenant on Civil and Political Rights, provides that the offender is to benefit from any provision made by law after the commission of the offence for a lighter penalty. Article 15(1) reads as follows –

> No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

See also question 4.2(c) and Para. 85.

72. Where is the practical need for the other general provisions? So far as revenues and duties are concerned, are particular provisions not usually made in the relevant statute?

Question 3.6:

What general provision, if any, should be made for criminal and related liability under legislation which is no longer in force?

Things done and still existing

73. We now come to the final residual general category, things done and still existing. It is the major case. Section 20(e) provides as follows –

> s.20(e) The repeal of an Act or the revocation of a bylaw, rule, or regulation at any time shall not affect –
>
> (i) The validity, invalidity, effect, or consequences of anything already done or suffered; or
> (ii) Any existing status or capacity; or
> (iii) Any right, interest, or title already acquired, accrued, or established, or any remedy or proceeding in respect thereof; or
> (iv) Any release or discharge of or from any debt, penalty, claim, or demand; or
> (v) Any indemnity; or
> (vi) The proof of any past act or thing; or
> (vii) Any right to any of Her Majesty's revenues of the Crown; or affect any charges thereupon, or any duties, taxes, fees, fines, penalties, or forfeitures ...

The final part of subpara.(vii) has just been considered. For the most part this is a statutory spelling out of the common law presumption of the non retroactivity of new legislation. Legislation is not to be construed as affecting things which happened in the past and especially rights and duties established then. R. S. Wright J. is often quoted: "a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure": *Re Athlumney* [1898] 2 QB 547, 552. The common law rule emphasises **vested** rights and rights of a substantive character. It excepts not just procedural legislation but also declaratory statutes and those which vary penalties. The Acts Interpretation Act provisions go into greater detail than the common law presumption and indeed those statutory statements to be found in other jurisdictions. In addition they put the common law presumptions more strongly. The less protective common law may still however have room to operate because of the apparently limited

scope of the provision. While in one sense its express scope is wide in that it expressly applies to subordinate legislation (including bylaws), it is narrow in that it does not expressly apply to repeals of **part** of an Act. The common law presumably continues to apply to part repeals and to amendments. On the face of it there does not appear to be any reason for the statutory rules to apply if a repeal is of the whole Act and for the common law presumptions to apply to a repeal of part or to an amendment.

74. Two subparagraphs in particular appear to extend the common law presumption. (They are not included in the Victorian, United Kingdom or draft Commonwealth statutes.) That presumption is usually said not to extend to new statutes concerned with procedure. Rather it protects substantive rights. Accordingly the removal of a requirement that contracts be in writing has been held to be effective even if litigation had been commenced and that requirement had been pleaded before the new law came into effect: *Craxfords (Ramsgate) Ltd* v. *Williams & Steer Manufacturing Ltd* [1954] 1 WLR 1130. The provision was not seen as affecting the legal rights of the parties but as dealing with the way in which certain contracts were to be proved. By contrast s.20(e)(vi) provides that the repeal of an Act shall not affect the "proof of any past act or thing". That appears to mean that the relevant evidentiary (and procedural?) rules in force at the time of the act or thing continue in effect. Of course different provision might be made explicitly, as for instance in the Evidence Amendment Act (No. 2) 1980 and the Contracts Enforcement Act 1956.

75. Section 20(e)(ii) is the other provision that may not be consistent with the common law presumption, nor with legislative practice. The repeal is not to affect any "existing status or capacity". Consider the great changes made in family law over the past twenty-five years. They have altered the position of the parties to a marriage and of children. The words "status" or "capacity" could well be related to the members of a family and to their various sets of rights and duties. In practice, as with the evidence provisions just discussed, the particular statute may regulate the matter (see e.g. the Matrimonial Property Act 1976, but compare the Family Proceedings Act 1980).

76. The remaining subparagraphs of s.20(e) are (i), the first part of (iii) (see Paras. 61-64 for the rest), (iv), (v) and (vii). Subparagraph (iii) is the most general, relates closely to the relevant common law, and may well include the other provisions. To repeat, it safeguards "any right, interest, or title already acquired, accrued or established". It is very like the common law statement included in Para. 73.

77. Does s.20(e)(iii) not incorporate the substance of the other provisions listed in the previous paragraph? A release or discharge from a debt, an indemnity, and a right to any revenues

all appear on first impression to be "rights ... already acquired" (subparas. (iv), (v) and (vii)). The terms of subpara.(i) may, however, go further than the common law presumption. The repeal is not to affect the effect or consequences of **anything already done or suffered.** If read broadly this may mean, to return to the earlier example, that new family law could not apply to the ongoing marriage relationships arising from a marriage prior to the law. (The references to the "validity" or "invalidity" of anything already done would appear to fall within the scope of the general language of subpara.(iii).)

78. The detail of the provision – or most of it – can be traced back to 1878 at least. There is also judicial discussion of the provisions, particularly of para.(e)(iii) (see especially Burrows [1976] NZLJ 343; Ward [1955] NZLJ 248). Some of that discussion indicates that the legislation takes the matter no further than the common law: attention has still to be given to the nature of the "right" which is to be protected under the statutory as well as the common law presumption; and according to the leading commentary on the provisions the "vested right" of the common law would seem to be much the same as the right "acquired, accrued or established" protected by the statutory provision (Burrows [1976] NZLJ at 347 citing *Robertson* v. *City of Nunawading* [1973] Vict LR 819). But some decisions do show that s.20(e)(iii) does have a wider application: *Wellington Diocesan Board of Trustees* v. *Wairarapa Market Buildings Ltd* [1974] 1 NZLR 562, 569–571 (which also indicates one of the limits to the provision: it does not extend to an application for a purely discretionary benefit; a hope is not an accrued right, even of a contingent character).

79. The provisions relating to things established do require careful examination both for their overall direction and their detail. They have to be considered as well against the particular provisions which are so often included in statutes, especially principal Acts. And they have to be related back to some of the broad matters of principle set out at the beginning. At the technical level the different, more compact provisions elsewhere may provide a better model.

Question 3.7:

> What has been your experience of these provisions about the impact of new legislation on existing situations, and especially of their interaction with particular statutes and the common law rules? What has been your experience of the preparation and operation of particular transitional, savings, application, and repeal provisions? In the light of that experience and of the matters of principle mentioned earlier, what proposals would you make about the general provision to be included in the Acts Interpretation Act and about the standard provisions

to be included in particular statutes? Is it possible to cover the repeal and retroactivity issues together under the somewhat more general heading of the temporal application of law?

IV THE PROOF, AVAILABILITY AND CITATION OF LEGISLATION

PROOF

80. The Evidence Act 1908 distinguishes between public and private Acts. Both it (s.28(1)) and the Acts Interpretation Act 1924 s.5(a) provide that all Acts are public Acts unless they expressly provide that they are private Acts, and accordingly Acts declaring themselves to be local Acts appear to come into the public category: *Deans* v. *District Land Registrar* [1928] NZLR 311, 315, but see the wording of s.30 – "private **and local** and personal Acts, not being public Acts". The provisions of the Evidence Act 1908 also deal with three related matters concerning regulations as well as Acts:

(1) the proof that the document was printed by the Government Printer;

(2) the proof of the Act or regulation itself; and

(3) the taking of judicial notice of the Act or regulation.

If a public Act or a regulation purports to be printed under the authority of the Government by the Government Printer it is deemed to be so printed unless the contrary is proved (s.29(1) and (2), second clauses). A document so printed is evidence of the Act or regulation and their contents (s.29(1) and (2), first clauses). The provision relating to private Acts (s.30) appears to collapse those two provisions but with different wording. See also ss. 31–46 for the proof of other documents. The Evidence Act requires judicial notice to be taken of public Acts, but not, it seems, private Acts (s.28(1)) and regulations (s.28(2)). In addition the Regulations Act 1936, ss. 5 and 7, provides that subject to the Evidence Act prima facie evidence of any regulations, and also of reprinted regulations, may be given by the production of a copy of the regulations purporting to be printed under the Regulations Act. Both the Evidence Act and Regulations Act provisions extend to other documents printed and published under the Regulations Act (ss. 28(3), and 6A(2) respectively).

81. In addition, the Acts Interpretation Act 1924 s.17(b) (one of a set of provisions relating to citation) provides that the reference to any Act shall in all cases be made –

> s.17(b) In the case of Acts and Ordinances of New Zealand, according to the copies of such Acts and Ordinances published or purporting to

be published by the Government Printer or under the authority of the Government of New Zealand for the time being:

Sections 28 and 29 of the Evidence Act 1908 and ss. 10 and 17 of the Acts Interpretation Act 1924 were mentioned in *Simpson* v. *Attorney-General* [1955] NZLR 271, 284, 286.

82. These provisions appear to have grown in a rather unco-ordinated way. They probably should not be considered apart from the other provisions in the Evidence Act 1908 relating to the proof of official documents. No doubt the courts should be required to take judicial notice of Acts and regulations and no doubt a document purporting to be printed by the Government Printer under Government authority should be evidence of the Act or regulations set out in it. The provisions could no doubt be stated more briefly and clearly. The questions of policy appear to be few.

Question 4.1

(a) So far as proof and judicial notice of an Act is concerned, is there any reason to distinguish between public and private Acts?

(The question is asked in a more general way in Para. 97, question 5.3.)

(b) Should the evidentiary provisions preclude any argument about the validity of the document in issue (the matter raised in *Simpson*'s case)?

(c) Should the evidentiary provisions apply as well to reprinted legislation (as with reprinted regulations and the 1931 reprint of statutes)?

AVAILABILITY

83. The Acts Interpretation Act 1924 s.13 provides that "all ... Acts shall be procurable by purchase at the office of the Government Printer". The Regulations Act 1936 s.3(1) provides that "All regulations ... shall forthwith after they are made be forwarded to the Government Printer and shall be numbered, printed, and sold by him". (The Attorney-General has a power to grant exemptions from this provision.) The former provision, about Acts, has been held to impose no duty enforceable by mandamus on the Government Printer. The responsibility under the provision rests on the Crown. *Victoria University of Wellington Students Association Inc.* v. *Shearer* [1973] 2 NZLR 21, affirmed [1974] 2 NZLR 138 (note). The provision about regulations in the Regulations Act 1936 s.3 was seen as being in "sharp contrast" ([1973] 2 NZLR at 25).

84. No doubt the Crown is responsible for making the texts of legislation available to the public. "People must be told what Parliament is doing and must be able to read the letter of the law": *V.U.W.S.A.* [1973] 2 NZLR 21 at 23, Wild C.J. Again the issues are within a limited compass.

Question 4.2

(a) Should any distinction be made between the obligation to publish Acts and regulations?

(b) Should the obligation be stated in more specific terms so that it might be enforceable in law?

(c) Should there be other consequences of non- publication or late publication?

85. The last of those questions is being considered in the context of the review of the Regulations Act. It is an aspect of the question of retroactivity.

CITATION

86. The Acts Interpretation Act contains several provisions relating to the citation of Acts, which presumably include regulations unless the context otherwise requires (ss. 14, 15, 16 and 19). The Act and practice suggest a variety of contexts in which "citation" might occur –

(1) An Act or regulation or other legal document might refer to another Act or regulation –

(a) simply for reference, as in the definition of Seal of New Zealand in s.4 of the Acts Interpretation Act;

(b) to repeal or revoke the Act or regulation, as in s.29 of the Acts Interpretation Act;

(c) to use the powers conferred by the Act or regulation.

(2) The reference might be made anywhere at all and not necessarily in another statute or document made under statutory authority: see ss. 15, 16 and 17 (the last of which appears to have more to do with the proof of statutes: Paras. 80–82).

87. There appears to be no justification for the provisions of general scope. It cannot be seriously suggested that legislation is necessary to determine the correct way, for instance in court or in legal writings, of citing legislation. So far as references in

legislation or documents made under statutory authority are concerned, the matter may be different, but is it really? Would there be any difficulty about the proposition in the Ombudsmen Act 1975 that it repealed and replaced the Parliamentary Commissioner (Ombudsman) Act 1962 if there were no s.15 of the Acts Interpretation Act?

88. Two other provisions of the Act raise separate issues about citation. Section 19 provides that –

> ... A description or citation of a portion of an Act is inclusive of the first and last words, section, or other portion of the Act so described or cited.

Can there be any doubt about this? When, for instance, s.8 of the Acts Interpretation Amendment Act 1986 amends the 1983 Amendment Act by omitting the words "Sections 25B and 25C" and substituting "Sections 25C and 25D", s.19 hardly has to be called in aid.

89. The other provision in the set raises a more substantial matter since it provides for the extension of any reference to a statute to include amendments to and substitutions for that statute (s.18). It has already been considered (Paras. 53–57).

Question 4.3

> Should the substance of ss. 14, 15, 16 and 19 of the Acts Interpretation Act 1924 be retained? (Section 17 is considered with the provisions on the proof of statutes (Paras. 80–82) and s.18 with repeals (Paras. 53–57).) If so, in what form should they be retained?

V THE ELEMENTS AND CHARACTERISTICS OF THE STATUTE

TITLE, SHORT TITLE AND PREAMBLE

90. The New Zealand practice has long been to include both a Title and a Short Title with the short title appearing at the head of the statute (and further shortened at the head of each page of it) and in s.1 –

> s.1 **Short Title** – This Act may be cited as the Acts Interpretation Act 1924.

The Title (often in practice called the Long Title) appears at the outset of the Act, before the enacting words –

> An Act to consolidate and amend the law relating to the interpretation of legislative enactments.

The Acts Interpretation Act mentions short titles but only in the context of citation (Paras. 86–87) and the title not at all. Both are plainly part of the Act and are therefore relevant to its interpretation. The Acts Interpretation Act 1924 expressly deems preambles, which are not commonly included in public Acts, to be part of the Act in issue "intended to assist in explaining the purport and object of the Act" (s.5(e)). This is another example (see also Para. 19(1)) of an unnecessary fiction: the preamble is part of the statute – it need not be deemed to be part. There does not appear to be any reason for different treatment of the preamble and title. This matter can be better pursued however under the third of the terms of reference concerning approaches to interpretation.

91. Recent Victorian changes raise the question whether the Title and Short Title need to be retained in their present form. The practice there is now simply to have a Short Title at the top of the statute and to include the Title in a purposive provision.

DIVISION INTO SECTIONS

92. Section 5(b) of the Acts Interpretation Act in its second part reflects and superseded an old common law rule which required separate enacting words for each provision –

> s.5(b) Every Act shall be divided into sections if there are more enactments than one, which sections shall be deemed to be substantive enactments, without any introductory words:

The first part of this provision incorporates a good principle of drafting – a separate section for a separate rule – but writing it into law gives it no greater authority. The provision also raises a terminological point touched on in Paras. 19 and 51: what is an "enactment"? Is it still necessary to rebut the common law rule, repealed for New Zealand in 1878 if not earlier? Compare, if the reference is needed, s.20(f) of the Acts Interpretation Act.

Question 5.1

Is there any reason to retain s.5(b) of the Acts Interpretation Act?

DIVISION INTO PARTS

93. Section 5(f) provides as follows –

> s.5(f) The division of any Act into parts, titles, divisions, or subdivisions, and the headings of any such parts, titles, divisions, or subdivisions, shall be deemed for the purpose of reference to be part of the Act, but the said headings shall not affect the interpretation of the Act:

On the face of it the prohibition in this provision is odd and is subject to very sensible evasion by judges who have to look instead to the arrangement and context provided by the sections, for example –

> On the point of construction it is first to be noticed, ignoring the heading inserted before s.8, that s.13 of the Acts Interpretation Act 1924 is in fact one of a group of sections dealing with the commencement of Acts. Sections 8 and 9 ..., 10 ..., 11 ..., 12 ... All these provisions then ... Looking next at s.13 itself in that context ...: *V.U.W.S.A.* [1973] 2 NZLR at 24.

The matter will be taken up along with the title and preamble (Para. 90), marginal notes (Para. 94) and schedules and appendices (Para. 95) in the third term of reference: the approaches to interpretation.

MARGINAL NOTES

94. Section 5(g) reads as follows:

> s.5(g) Marginal notes to an Act shall not be deemed to be part of such Act:

This provision has not been read as preventing the use of marginal notes in the interpretation of legislation. That might well have been the intention (preambles are part of the Act and **do** affect interpretation; headings are part of the Act but do **not** affect interpretation; marginal notes are not even part of the Act and a fortiori ...). In fact courts have sometimes found marginal notes to be useful.

SCHEDULES AND APPENDICES

95. Section 5 (h) provides that schedules and appendices "shall be deemed to be part of [the] Act" and accordingly part of the law. (Once again we note an unnecessary fiction.) They will of course often be interpreted themselves and may well be relevant to the interpretation of other provisions of the Act. In some cases though the context might indicate that the appended document is there only for reference or information and not as part of the law, for example much of the texts of the 1949 Geneva Conventions as scheduled to the Geneva Conventions Act 1958. As indicated, the discussion of interpretation – the third of the terms of this reference – will consider the various elements of legislation.

AMENDING ACTS

96. Section 5(c) reads –

> s.5(c) Every Act passed in amendment or extension of a former Act shall be read and construed according to the definitions and interpretations contained in such former Act; and the provisions of the said former Act (except so far as the same are altered by or inconsistent with the amending Act or Acts) shall extend and apply to the cases provided for by the amending Act or Acts), in the same way as if the amending Act or Acts had been incorporated with and formed part of the former Act:

The provision contains two propositions, the second (the more general) including the first which is the more particular. Amending statutes usually (invariably?) begin with a version of the second:

> This Act may be cited as the ... Amendment Act 1986, and shall be read together with and deemed part of the ... Act (hereinafter referred to as the principal Act).

Such provisions appear unnecessary so long as s.5(c) is in force. The first part of s.5(c) appears also to be unnecessary since it is covered

by the second part. It also raises an unnecessary difficulty with the reference to extension which is not used as a technical term. There is an important gloss on the proposition stated in s.5(c) and the standard introductory provision: the amending Act will not, unless it or the context otherwise indicates, operate from the commencement date of the principal Act. The general rules about non retroactivity will usually apply: part II.

Question 5.2

Is the first part of s.5(c) needed? Is the second part of s.5(c) needed, in view of the usual introductory formula in amending Acts? If the second part is retained, should the usual introductory formula be omitted from amending Acts? Is it possible to do without both the second part of s.5(c) and the usual introductory formula in amending Acts?

PUBLIC AND PRIVATE ACTS

97. The Acts Interpretation Act 1924 s.5(a) provides –

> s. 5(a) Every Act shall be deemed to be a public Act unless by express provision it is declared to be a private Act:

The Evidence Act 1908 s.28(1) is in part to identical effect. As noted in Para. 80 it goes on to require that judicial notice be taken of a public Act. As we have seen, the distinction has a consequence for proof and judicial notice of statutes. Section 5(k) also makes the distinction significant for the scope of application of the particular Act: a private Act (or rather an "Act of the nature of a private Act") does not –

> affect the rights of any person or of any body politic or corporate except only as is therein expressly mentioned: (s.5(k))

The distinction between public and private bills has consequences as well for the internal procedures of the House of Representatives. That is also true of local bills which do not however get separate recognition in the Acts Interpretation Act. The distinctions may also have consequences for interpretation.

Question 5.3

Need the distinction between public and private Acts be maintained in the Acts Interpretation Act, and, if so, what should be the consequences of the distinction? Is there any need to deal specifically with local Acts, and if so, with what consequences?

AMENDMENT AND REPEAL OF AN ACT WITHIN THE SAME SESSION OF PARLIAMENT

98. Section 5(l) of the Acts Interpretation Act is as follows –

> s.5(1) Every Act may be altered, amended, or repealed in the same session of the General Assembly or the Parliament of New Zealand in which it is passed.

This provision first appeared in the United Kingdom interpretation legislation in 1850. Until then it had been thought that statutes could be amended in the session of their enactment only if such a power had been expressly reserved. That view appears to be incompatible with the supremacy of Parliament and indeed it was said to be without authority. The matter is comparable to that raised by s.5(b) about enacting words (Para. 92).

Question 5.4

Is there any reason to retain s.5(l) of the Acts Interpretation Act?

VI PRINCIPLES OF INTERPRETATION

99. This matter will principally be considered under the third of the terms of reference, concerned with general approaches to interpretation. There, for instance, we shall take up section 5(j) ("fair, large and liberal construction and interpretation"), the use of extrinsic material in the interpretative process, and section 5(d) ("The law shall be considered as always speaking"). We shall also consider the significance for interpretation of the various elements of legislation, several of which were noted under the previous heading: the Title, Short Title, preamble, division into parts and headings, marginal notes, and appendices.

THE EFFECT OF STATUTES ON THE CROWN

100. This particular aspect of interpretation can be raised conveniently here. Section 5(k) of the Acts Interpretation Act 1924 reads in part as follows –

> s.5(k) No provision or enactment in any Act shall in any manner affect the rights of Her Majesty, her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby; ...

The remaining part of the provision relates to the scope of application of private Acts (Para. 97). This provision and the common law rule it reflects provide an explanation for the very common section, usually s.3, included in legislation –

> This Act shall bind [or binds or is to bind] the Crown.

The Crown Proceedings Act 1950 ("An Act to consolidate and amend the law relating to the civil liabilities and rights of the Crown ...") provides as follows in s.29(1) –

> This Act shall not prejudice the right of the Crown to take advantage of the provisions of an Act although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any Act which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

101. Section 5(k) presents two sets of issues. What does it mean? Should it be retained, amended, or its effect reversed?

So far as its present effect is concerned, the following matters, among others, arise –

(1) *The technical applicability of s.5(k).* Section 28 of the Acts Interpretation Act provides that the provisions of the Act apply to the Act itself. The Act at no stage expressly states in its own provisions that it binds the Crown. And on the express wording of s.5(k) the provision in the Crown Proceedings Act 1950 s.5(2) that the Crown is bound by the Acts Interpretation Act (and various other Acts) is not effective since s.5(k) requires the statement to be made in the Act in issue; and in any event the Crown Proceedings Act 1950 does not itself state that it binds the Crown. Accordingly can its section 5(2) begin to be effective? Obviously the preceding points cannot be taken seriously. Clearly the statutes mentioned do "affect" the Crown and bind it. And no doubt that is also true of the Constitution Act 1986, the Electoral Act 1956, the State Services Act 1962, the Customs Act 1966 and the Income Tax Act 1976, to name just some of the Acts which must bind and affect the Crown although they contain no express statement to that effect – at least none that has been discovered: sometimes the express statement is hidden away without a relevant shoulder note, e.g. Gas Act 1982 s.3(3), and at the end of the statute, e.g. Crimes Act 1961 s.408.

(2) "*Expressly*". The answer to the points made in the preceding paragraph is that "expressly" does not and cannot mean only expressly in the sense of using the particular words or formula that the earlier Act appears to require. It is enough if Parliament in exercise of its supreme law making powers indicates, whether expressly or not, its intention that the Crown is bound. An earlier Parliament cannot require a later Parliament to use a particular form of words to achieve its purpose. The apparent certainty of the rule in s.5(k) is then just that – apparent. Parliament in the Acts Interpretation Act indeed concedes the point in a general way in the relative language of s.2 and of the introductory words to s.5 (Paras. 11–14).

(3) "*Rights*". This word has been interpreted in this context as including all rights known to the law: *Lower Hutt City* v. *Attorney-General* [1965] NZLR 65, 74. See further Burrows, the New Zealand Commentary to Halsbury's Laws of England (4th ed.) Statutes 930.

(4) "*The Crown*". There has also been litigation at times about which bodies are entitled to the benefit of the provision: see the commentary just cited.

102. In practice in recent years a significant number of statutes have not included the express declaration. In 1982 they included statutes on the Clyde Dam, Chiropractors, Customs Orders Confirmation, Vocational Training, Friendly Societies and Credit Unions, Finance, Law Practitioners, Fertilisers and Banking, and in

1983 Fisheries, Government Life Insurance Corporation, Apprenticeship, Air Services Licensing (although see s.44), Social Security (Reciprocity with the United Kingdom), Synthetic Fuels Plant, Forestry Rights Registration, Trustee Banks, Private Savings Bank, Foreign Affairs and Overseas Service, Area Health Boards, and Health Service Personnel. That practice raises the questions of law and policy asked earlier: do those statutes as a matter of law affect the rights of the Crown or bind it; and what should the position be? The uncertainty of the answers to the first question is itself a reason for considering changing the rule.

103. What should the position be? One meaning of the rule of law is equality before the law – that, in particular, the Crown should have the same rights and be subject to the same obligations as others subject to the law. Of course, legislation in a great number of cases does confer special powers and rights (and sometimes duties) on the Crown. Sometimes particular decisions will be taken to give the Crown a special position in a particular statute. That can then be indicated in its specific terms, e.g. the Dog Control and Hydatids Act 1982. Is there any reason for the additional general and uncertain immunity? What is to be made of the great change in the position and function of the State over the centuries since the immunity was first established?

Question 6

Should the general presumption that the Crown is not bound by legislation be maintained? If not, and the presumption were reversed, should the new presumption apply to existing statutes or to amendments to them? Should there be a transitional arrangement?

104. The second of these questions arises in a more general way in the present exercise. If a provision of the Acts Interpretation Act is amended or replaced, should the new provision apply to all existing legislation? On the whole the New Zealand practice has been to provide for general application but there have been exceptions (e.g. the Acts Interpretation Amendment Act 1908 so applied, except for s.5, but that limit on retrospectivity was removed in 1924).

VII STANDARD DEFINITIONS, TIME AND DISTANCE

ARE THE SECTION 4 DEFINITIONS APPROPRIATE AND USEFUL?

105. A major reason for the introduction of Interpretation Acts is to provide for the shortening of statutes by giving words often used in the statute book a standard meaning. Thus the title of the New Zealand Act of 1888 read in part, "An Act ... for shortening the language used therein ...". That phrase still appears in the Victorian title. The definitions also help provide for consistency of language throughout the statute book.

106. In terms of s.4 of the Act the definitions set out in it apply to every Act of Parliament if not inconsistent with the context and unless there are words to exclude or restrict the meaning (see also s.2 and Paras. 11–14). Given the usual meaning of "Act" in s.4 and the provisions of s.7, the meanings will also extend to subordinate legislation. The definitions do not unless it is so provided in the particular case extend to Imperial statutes which are part of New Zealand law. Such provisions are, however, common: see para. 104 of the Commission's report on Imperial Legislation in force in New Zealand (NZLC R1).

107. The definitions provision raises four main questions –

(1) Should the particular definition be retained?

(2) If so, should it be amended?

(3) Should it be included in another statute?

(4) Are there provisions elsewhere in the statute book which should be moved to an Acts Interpretation Act having general application?

The last two questions arise from the legislation mentioned in the last part of this paper. In some cases the answer might be a standard draft which, with appropriate adjustments, is to be used in particular statutes. See for example Paras. 149 and 180.

108. Answers to those questions depend on the rest of the statute book. We wish to draw on your experience in relation to s.4 in order to assess the usefulness and appropriateness of what it contains. In part this is an information gathering exercise; asking where and how frequently these words are used in the statute book. (Ultimately we envisage this task will be made easier by computer accessing.)

Question 7.1:

In relation to each of the definitions in s.4 could you please tell us which, if any, of your Acts and regulations use this word? Do you ever refer to the s.4 definition of this word as a guide to interpretation and, if so, in what context?

Sometimes the answers to these questions will be obvious, as with archaic words or phrases such as "provincial ordinance". In other cases the words may have obvious meanings and not require a statutory definition. Is there any difficulty, for example, about the meaning of "the North Island"? (And where does it appear?)

109. The answers to those questions should help with the evaluative questions – those asked in Para. 107.

Question 7.2:

For each of the s.4 definitions please indicate whether the particular definitions should be omitted, retained without amendment, or retained with amendment. If retained with amendment please indicate what the amendment should be.

110. We are also concerned with the duplication of definitions. The first is where there is included in the other Act's interpretation section the same definition as that in s.4 or a substantially similar one. It would be useful to distinguish between cases of advertence to the Acts Interpretation Act and inadvertence to it. This practice perhaps evidences a lack of confidence in s.4. The second duplication occurs where the Act does not rely on the shorthand definition and instead spells out the term in its text, for example by referring to the year ending on the 31st of March instead of to the "financial year".

111. It is useful to divide the definitions into the following groups –

Official Documents (Paras. 112–131)
Officials (Paras. 132–153)
People (Paras. 154–166)
Legal Action (Paras. 167–176)
Time (Paras. 177–182)
Places (Paras. 183–196)

OFFICIAL DOCUMENTS

112. *Act*

"Act" means an Act of the General Assembly or of the Parliament of New Zealand, and includes all rules and regulations made thereunder.

Section 2 of the Interpretation Act 1878 provided that the word "Act" in that Act and in later Acts **included** ordinances of the Governor, the Governor-in-Chief, or the Lieutenant Governor passed with the advice and consent of the Legislative Council of New Zealand or New Munster. Given our constitutional history and the relevance of pre 1852 ordinances to the law at that time that is not a surprising provision; it is limited to *primary* legislation of the Crown colony time. In 1888 that provision was removed and a provision in the present form included (Interpretation Act 1888 s.4; Acts Interpretation Act 1908 s.5). The later provisions are different in their effect from the 1878 provision which was concerned with primary and not subordinate legislation.

113. The statutory provisions in Victoria (s.38), Western Australia (s.5) and draft Commonwealth provisions define "Act" as simply meaning Act.

114. The widened definition can have an important consequence for the relationship between primary and secondary legislation. An Act (properly so-called) which says it is subject to the provisions of "other Acts " might as a consequence be subject to the provisions of regulations and might accordingly be repealed or amended by regulations. That is contrary to the basic constitutional relationship between Acts made by Parliament and subordinate legislation made under its authority by the executive. The Court of Appeal has given the provision that wide effect in *N.Z. Shop Employees Industrial Assn of Workers* v. *Attorney-General* [1976] 2 NZLR 521, 526, 534. That broad consequence has caused the Statutes Revision Committee concern. In its review of the New Zealand Forest Products Remuneration Regulations 1980 it expressed the opinion that -

> "... no amendment or alteration of an Act of Parliament should be effected by simple act of the Executive unless Parliament has made a conscious choice that such a course is appropriate in all the circumstances."

It accordingly recommended that consideration be given to amending the Acts Interpretation Act "to ensure that in future it will be necessary for Parliament to make a conscious decision in any particular case where it intends to make over its powers to the Executive, rather than merely allowing such powers to be transferred by default" (App JHR 1980 I 5, pp. 9, 12). One way to do this would be to give "Act" its ordinary meaning. Another way would be to leave it with its ordinary meaning by not including anything in the interpretation legislation, and requiring those proposing a power to derogate from Acts by regulations to provide expressly for it in the particular Bill and Act.

115. A related point (see e.g. Paras. 19, 51 and 92) is the

use and meaning of the word "enactment". The word "rules" too is not defined.

116. *Regulations*
"Regulations" means regulations made by the Governor-General in Council.

The Regulations Act 1936 s.2 contains a wider definition. As set out below, the definition indicates the proposals for change made by the Regulations Review Committee (App JHR 1986 I 16B, pp. 47-48). The proposed deletions appear in square brackets and the additions are underlined -

> "Regulations" means [and includes] -
>
> (a) Regulations, rules, or bylaws made under the authority of any Act by the Governor-General in Council or by any Minister of the Crown [or by any other authority empowered in that behalf]
>
> (b) Orders in Council, Proclamations, notices, Warrants, and instruments of authority made under any Act by the Governor-General in Council or by any Minister of the Crown which extend or vary the scope of any provisions of any Act
>
> (c) Orders in Council bringing into force or repealing any Act or any provision of any Act
>
> (d) Regulations made under any Imperial Act or under the prerogative rights of the Crown and having force in New Zealand
>
> (e) Instruments deemed by any Act, regulation or other instrument of authority to be regulations for the purposes of the Regulations Act or this Act; but does not include regulations made by any local authority or by any authority or persons having jurisdiction limited to any district or locality.
>
> [(2) If any question arises as to whether any instrument is a regulation for the purposes of this Act, it shall be determined by the Attorney-General.]

117. The Regulations Review Committee has undertaken the task of defining regulations in the context of preparing a draft Regulations Bill. The definition becomes increasingly important since it determines which instruments are made subject to the further procedural controls - tabling, scrutiny, disallowance - which are proposed.

118. One question will be whether the definition is better included in the Regulations Act.

119. *Rules of Court.* Section 26 (a provision originally added in 1908) contains the following provision –

> s.26(1) In any Act the expression "rules of Court", when used in relation to any Court, means, unless a contrary intention appears, rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of that Court.
>
> (2) The power of the said authority to make rules of Court shall, unless the contrary intention appears, include a power to make rules of Court for the purpose of any Act which directs or authorises anything to be done by rules of Court.

The expression used in the Judicature Act 1908 for the High Court is "the High Court Rules" (ss. 2, 51, 51A, 51C and the Second Schedule as enacted in 1985) and for the Court of Appeal the Court of Appeal Rules (s.51C(2)(d)), although that name is not required by the Act. The District Courts Act 1947 s.122 shoulder note (see also s.2(1)) uses the expression "District Courts Rules". The Maori Affairs Act 1953 ss. 25 and 40 provides for the making of "Rules of Court" for the Maori Land Court and Appellate Court. The Armed Forces Discipline Act 1971 s.150 empowers the making of "rules of procedure" for courts martial and the Courts Martial Appeals Act 1953 s.26 the making of "Rules of Court" (to be made in the manner provided in the Judicature Act) for the Courts Martial Appeal Court. See also the Crimes Act 1961 s.379 and Matrimonial Property Act 1976 s.53.

120. Particular statutes dealing with the jurisdiction of general courts sometimes refer in a non specific way to "rules of Court", e.g. Immigration Act 1964 s.22F(12) (but cf. s22G(7)), Animal Remedies Act 1969 s.34(18), Broadcasting Act 1976 s.84(8), Air Services Licensing Act 1983 s.35. But in other cases such appeal provisions make no such reference presumably on the basis either that the particular Act regulates the process or more likely that the rules will be applicable in any event, e.g. Judicature Act 1908 s.51(1) (practice and procedure "shall be regulated" by the High Court Rules).

121. Does the definition in subs.(1) provide any assistance? Does it state what is obvious? Subsection (2) is a different matter since it confers powers, but should powers be conferred in this indirect way? Should not the rule making power be directly conferred on the rule making authority – as indeed it is in the provisions referred to in Para. 119.

122. *Imperial Act*
"Imperial Act" means an Act made and passed by the Imperial Parliament.

See "Imperial Parliament" Para. 143.

123. *Order in Council*
"Order in Council" means an Order made by the Governor-General in Council.

See "Governor-General in Council", Paras. 141-142.

124. *Proclamation*
"Proclamation" means a proclamation made by the Governor-General under the Governor-General's hand and the Seal of New Zealand and -

(a) Gazetted; or

(b) In the case of a Proclamation summoning, proroguing, or dissolving Parliament, publicly read in accordance with section 18(3)(b) of the Constitution Act 1986

See also "Gazette", Para. 127. Is there any need for para. (b), given that that is a definition for just one purpose and that in that context the same provision is made?

125. *Seal of New Zealand*
"Seal of New Zealand" means the seal known by that name and referred to in the Seal of New Zealand Act 1977.

The Seal of New Zealand Act 1977 has general and pervasive effect. Need reference be made to it in s.4?

126. *Provincial Ordinance*
"Provincial Ordinance" means an Act or Ordinance passed by the Superintendent of any former province, with the advice and consent of the Provincial Council thereof.

Some Ordinances are still in effect and of significance, for instance that establishing the University of Otago. Is this provision needed in support of them or others which might still have legal significance?

127. *Gazette*
"Gazette", "Government *Gazette*" and "*New Zealand Gazette*" means the *Gazette* published or purporting to be published by or under the authority of the Government of New Zealand, and includes any supplement thereof published as aforesaid in any place.

See also "Public notification", Paras. 173-175.

128. "Gazetted" means published in the aforesaid *Gazette*.

The inclusion of this definition raises the question whether there should be a general provision in s.4 providing that

different grammatical forms of the same word should have corresponding meanings. See also "Writing", Para. 131.

129. *Maori Gazette*
"*Kahiti*" or "*Maori Gazette*" means a *Gazette* published in the Maori language by or under the authority of the Government, containing such notices and matters as are required by any Act to be published in the Maori language, or are directed by the Government to be inserted therein.

The Finance Act (No. 2) 1931 s.47 provides that publication in the Gazette is equivalent to publication in the Kahiti which in fact is no longer published. The Maori Affairs Act 1953 appears not refer to it but rather to the Gazette, e.g. ss. 438, 465.

130. *Information*
"Information" means an information laid in accordance with the Summary Proceedings Act 1957 in respect of an offence punishable on summary conviction.

This is one of three provisions in s.4 relating to the criminal process. The others are "committed for trial" and "summary conviction" (Paras. 168 and 176). The question arises whether they should not be integrated into the Summary Proceedings Act and the Crimes Act. Both Acts (see Part II of the former and Part XII of the latter) have a general application to proceedings for offences. They affect, in the way discussed in part X of this paper, provisions of particular enactments creating offences. The provisions in s.4 are of course only a small part of that pervasive law of criminal process. Are they serving any useful purpose?

131. *Writing*
"Writing", "written", or any term of like import, includes words printed, typewritten, painted, engraved, lithographed, or otherwise traced or copied.

The word "Document" is now frequently defined in legislation, e.g. Commerce Act 1986 s.2(1), Evidence Amendment Act (No. 2) 1980 s.2(1), Official Information Act 1982 s.2(1). Would a definition of "document" in s.4 be more useful? The definitions mentioned take account of computer technology.

OFFICIALS AND OFFICIAL BODIES

132. *Administrator of the Government*
"Administrator of the Government" means the Administrator of the Government authorised by law to perform all or any of the functions of the Governor-General whenever the office of

the Governor-General is vacant or the holder of the office of Governor-General is for any reason unable to perform all or any of the functions of the office of the Governor-General.

See the discussion under "Governor-General" Paras. 139-140.

133. *Attorney-General*
"Attorney-General" in respect of any power, duty, authority or function imposed upon or vested in him in virtue of his office as Attorney-General, includes the Solicitor-General.

This provision confers powers rather than defining the word. It is considered in the part on Powers, Para. 211.

134. *Audit Office*
"Audit Office" means the Controller and AuditorGeneral; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Controller and Auditor-General.

Is it desirable to define an office by reference to the officer? Audit Office is similarly but more specifically defined in terms of its functions, duties and powers in the Public Finance Act 1977 ss. 2, 14, 24, 29. Are those provisions sufficient especially considering the pervasive nature of that Act and its general application?

135. *Constable*
"Constable" includes a police officer of any rank.

Part I of the Police Act 1958 headed "... Members of the Police" deals with the Commissioner, Assistant and Deputy Assistant Commissioners, Chief Superintendents, other commissioned officers (including Superintendents, and Chief Inspectors), non-commissioned officers, constables and cadets (who are expressly said to be "members of the Police"; but see proviso (a) to s.11(2)). The Crimes Act 1961 s.2(1), the Summary Proceedings Act 1957 s.2(1), and the Summary Offences Act 1981 s.2(1), all (presumably unnecessarily) provide that "constable" includes any member of the Police, and the substantive provisions of those Acts use the term "constable": Crimes Act ss. 31, 32, 33, 34, 39, 40, 42. More recent amendments use "member of the Police": ss. 216B and D (enacted in 1979) and 198A (1986 but cf s.202B enacted at the same time). So too do other important enactments in the criminal law area: e.g. Misuse of Drugs Act 1975 ss. 18 (but cf. s.18(1)), 18A, and 19; Civil Defence Act 1983 s.51; and the Arms Act 1983. Only the last of those Acts defines "member of the Police" as meaning a member of the Police of New Zealand of any rank (s.2). This, like any other undefined term, implies a reference to the police legislation.

136. The definition of "constable" in s.4 (as in the Crimes

Act) is needed so that more senior members of the police can use the powers still conferred on "constables" and come within the scope of offences relating to "constables". If however "constable" was replaced throughout the statute book by "members of the Police", no definition would appear to be needed. The matter would be resolved, as with other issues of personal or official status, by reference to the particular governing law. The newer usage does appear preferable - it involves no element of fiction, requires no explanation, and avoids a word which now appears a little archaic.

137. *Consular officer*
"Consular officer" means a Consul-General, Consul, Vice-Consul, Consular Agent, and any person for the time being authorised to discharge the duties of Consul-General, Consul or Vice-Consul.

The term is used in the High Court Rules, R.218(2)(b), and the Oaths and Declarations Act 1957 s.2 (where "pro-consul" has been added). It is differently defined in the Shipping and Seamen Act 1952 s.2(1). It is defined in terms of the Vienna Convention on Consular Relations for the purposes of the Consular Privileges and Immunities Act 1971. The United Kingdom Act (1978, schedule 1) defines "consular officer" by reference to that convention definition. Given the central place of the convention in the law of consular relations that appears the sensible course.

138. *Government Printer*
"Government Printer" means the printer to the New Zealand Government at Wellington purporting to be the printer authorised to print the statutes of the General Assembly and the statutes of the Parliament and the Acts of State of New Zealand, and otherwise to be the Government Printer of New Zealand.

The term appears in the Acts Interpretation Act, the Regulations Act and the Evidence Act (Para. 80) and is in schedules to the State Services Act and Ombudsmen Act. Is it used anywhere else? Is the definition of any value? Can there be any doubt about the meaning? The United Kingdom Act does not for instance define Her Majesty's Stationery Office.

139. *Governor-General*
"Governor-General" or "Governor" means the Governor-General of New Zealand; and includes the Administrator of the Government.

The first part of this definition makes it clear that the word "Governor" includes the Governor-General. What statutes are there now which still use the pre 1917 term? (And is there any difficulty about the point?) The rest of the first part of the definition says that "Governor-General" means the Governor-General of New

Zealand. Can there ever be any question about that? The same question arises for such words as "Parliament" and "Act" (if it is restricted to its ordinary meaning as suggested earlier, Para. 114).)

140. The second part of the provision is important in making it clear that the Administrator can exercise the powers of the Governor-General. That should of course be beyond doubt in the law. The only questions are probably presentational ones. Thus, is the phrase "Administrator of the Government" used anywhere in the statute book (except in the definition of Governor-General)? And might the substantive point be better made in the Constitution Act?

141. *Governor-General in Council*
"Governor-General in Council" or "Governor in Council "or any other like expression, means the Governor-General acting by and with the advice and consent of the Executive Council of New Zealand.

The discussion in Para. 139 raises the question whether "Governor in Council" still appears in the statute book. The provision states a central constitutional principle that the Governor-General can take the actions referred to only with the advice and consent of Ministers.

142. The standard provision empowering the making of regulations reads in part "The Governor-General may by Order in Council ..." Given the above provision, could that be condensed to "The Governor-General in Council may ..."?

143. *Imperial Parliament*
"Imperial Parliament" means the Parliament of the United Kingdom.

This definition with its reference to the United Kingdom is a narrow one; it does not include the Parliament of England or of Great Britain. If a definition is included it should be a wider one: see for example para. 31 of the Commission's report on Imperial Legislation in force in New Zealand (NZLC R1). But is a definition needed? Does the expression appear only in circumstances in which there can be no doubt about its meaning, and note that in at least two cases in which it might have been used it was not: Fugitive Offenders Amendment Act 1976 title and s.2; and Wills Amendment Act 1955 s.2.

144. *Justice*
"Justice" means a Justice of the Peace having jurisdiction in New Zealand.

Is the word likely to be construed as having any other meaning? This office is defined in the Justices of the Peace Act 1957 which provides for the appointment and functions of Justices including their functions and powers under other Acts. It includes a definition in

s.2: "In this Act the term 'Justice' means a Justice of the Peace for New Zealand". Might the matter be left for that Act? Are they to be distinguished in this respect from court registrars or judges who are given functions by many statutes and who are not singled out for definition in s.4?

145. *Local Authority*

> "Local authority" means any Council, Board, Trustees, Commissioners, or other persons, by whatever name designated, entrusted under any Act with the administration of the local affairs of any city, town, place, borough, county, or district, and having power to make and levy rates.

"Local authority" is frequently defined in other ways in other statutes. Various definitions appear according to the nature of those other Acts.

146. The Local Authority Loans Act 1956 appears to contain a definition used more generally in the area of finance (see for example the adoption of this definition in s.2 of the Securities Act 1978). It extends to non-territorial bodies as well. The definition in that Act says –

> "Local authority" means a City Council, a Borough Council, a County Council, a Town Council, a District Council, a Regional Council, a United Council, a Harbour Board, an Electric Power Board (including the Auckland Electric Power Board), a Drainage Board, a River Board, a Catchment Board, a Water Supply Board, an Urban Fire Authority, or a Pest Destruction Board; and includes the Auckland Transport Board, the Christchurch Transport Board, and the Dunedin Drainage and Sewerage Board and such other public bodies as are from time to time declared by any other Act or by the Governor-General, by Order in Council, to be local authorities for the purpose of this Act; and ...

147. Other definitions of local authorities apply to elections e.g. the Local Elections and Polls Act 1976 s.2. In more specific instances, a local authority is defined by listing in a schedule e.g. Official Information Amendment Act 1986, Local Government Act 1974, Local Authorities (Members' Interests Act) 1968. See also Para. 227.

148. Given the difficulties of developing a universal definition and considering the paucity of instances in which the s.4 definition seems to be applied (the definition is a particularly narrow one especially with its territorial limit and the reference to the levying of rates) should an attempt be made to establish a generally applicable definition at all? In this situation it may be more appropriate to include definitions as they apply to different kinds of activity.

149. Some attempt at consistency would be desirable here

however. The number of definitions is further multiplied by other words (with their own definitions) that refer to similar subject matter, e.g. local body, borough, territorial authority, District Council, Town Council. See "Borough", Para. 184.

150. *Parliament*
"Parliament" means the Parliament of New Zealand.

Can there really be any doubt about this?

151. *Member of Parliament*
"Member of Parliament" means a member of the House of Representatives.

152. *District Court*
"District Court" means a District Court constituted by section 3 of the District Courts Act 1947; and "Chief District Court Judge" and "District Court Judge" have corresponding meanings.

See the note under the next heading.

153. *High Court*
"High Court" means the High Court of New Zealand.

Why in terms of consistency is there no provision about High Court Judges, or about other courts such as the Maori Land Court? But is there really any need for any of these provisions?

PEOPLE

154. *Commonwealth citizen*
"Commonwealth citizen" means a person who is recognised by the law of a Commonwealth country as being a citizen of that country.

See also "Commonwealth country" Paras. 185-187. The statute book has long distinguished between "British subjects" and others, or between "aliens" and others (the distinctions are not exactly the same.) See for example the Australian and New Zealand Commentary to Halsbury's Laws of England on British Nationality 948-972. References in those terms are now fewer. But how many references are there to "Commonwealth citizens"? For instances see the Race Relations Act 1971 s.37(3), and the Human Rights Commission Act s.93(3). But these are express alternatives to "British subjects", as in the Citizenship Act.

155. If no general definition is required for aliens and British subjects - the matter being left (as with other matters of personal status) to the citizenship law - is there any reason for

"Commonwealth citizen" to be included? Consider the other legislation about personal status mentioned in part X, Para. 228.

156. *Company*
"Company" or "association", where used in reference to a corporation, includes the successors and assigns of such company or association.

See also "Person", Para. 159. This definition is frequently duplicated in the statute book. All the definitions refer to perpetual succession but variations on the general formula appear, for example, in the Charitable Trusts Act 1957, Incorporated Societies Act 1908 and Trustee Banks Act 1983, often to include both incorporated and unincorporated organisations. Many companies are defined by reference to the Companies Act 1955, being registered thereunder.

157. *Minor*
"Minor" means any person under the age of 20 years.

The Age of Majority Act 1970 has pervasive effect in defining when someone is a minor. Section 4 reads –

> 4. **Age of majority** – (1) For all the purposes of the law of New Zealand a person shall attain full age on attaining the age of 20 years.
>
> (2) In the absence of a definition or of any indication of a contrary intention, the expressions "adult", "full age", "infant", "infancy", "minor", "minority", "full capacity", "majority", and similar expressions in any enactment or instrument shall be construed in accordance with subsection (1) of this section.
>
> (3) This section shall not affect any reference in any enactment or instrument to an age expressed in years.

Is the duplication of s.4 necessary? It does not of course have as wide a scope as the 1970 Act.

158. Given the large and increasing number of exceptions created under s.4(3) giving certain privileges and responsibilities to 16 and 18 year olds the 20 year standard is misleading. What consequences should be drawn from that?

159. *Person*
"Person" includes a corporation sole, and also a body of persons, whether corporate or unincorporate.

See also "Company" Para. 156. This provision has a very broad but random application over the statute book. Broad because the word "person" is very often used in the statute book, but random because "person" may often not be used and another apparently similar word

such as everyone (or no one) used instead. Those words may be capable of applying to legal persons, as may other words often used to indicate those with rights and duties under the law such as lessor and lessee, contractor, employer, creditor and debtor, owner and occupier, assignee, and manufacturer.

160. "Broad" in the previous paragraph should perhaps read "potentially broad" since the definition, as ever or perhaps more than ever, is a relative one subject to displacement by context, as it often is for instance in most usages of "person" in family legislation or in the many provisions which provide for the establishment of committees, tribunals and other statutory offices. Indeed most of the usages of "person" in the Acts Interpretation Act itself can apply only to human persons: ss. 4 (Audit Office, Consular officer, Governor-General, minor, statutory declarations), 25(e), 25A, 25B, and the Finance Act (No. 2) 1952 s.27.

161. The Act itself perhaps suggests a lack of confidence in the definition since the import of this definition is repeated in s.6 which subjects bodies corporate to penal acts applicable to "persons" and in s.5(k). See further Paras. 213–217.

162. Other statutes also indicate that lack of confidence, or perhaps inadvertence, by adding to a reference to "person" a reference to "body", e.g. Cinematograph Films Act 1976 s.10(1)(a), Water and Soil Conservation Act 1967 s.25(1), and (3) and Urban Transport Act 1980 s.24(1) (all enacted in 1980). The lack of confidence appears in two further ways in the repetition of the definition or the use of a definition to the same effect in other Acts, e.g. Commerce Act 1986 s.2.

163. The issues appear to be two. How can the question of scope of the personal application of law best be approached and determined in particular statutes? And is a general definition of "person" and perhaps of other words, such as "everyone", helpful in a residual way?

164. *Gender*
Words importing the masculine gender include females.

The Minister of Justice has declared a commitment to gender neutral drafting and legislation is now being prepared accordingly. What statutes use the masculine gender when the context excludes women? What about the converse, i.e. where the statute uses the female gender to exclude the male? Is the female gender only used where the context excludes that interpretation: see for example s.194(b) of the Crimes Act 1961 (assault on a female). What instances are there of gender being explicitly mentioned e.g. the definition of "The Police" under the Police Act 1958 "includes all members of **either sex** appointed ..."?

165. *The singular and the plural*
Words importing the singular number include the plural

> number, and words importing the plural number include the singular number ...

The main issue in the cases is whether that extended meaning is "not inconsistent with the context ...". The limiting phrase is different in other Interpretation Acts. That issue in its turn goes to a more general issue about the character of Interpretation Acts. This is to be seen in a decision of the Privy Council holding that the New South Wales company legislation which provided for the compulsory transfer of shares from a company "to another company or corporation" did not extend to a takeover by two companies. The policy considerations making it appropriate to confer the compulsory power on one company did not necessarily extend to a group of companies acting jointly –

> It would seem unlikely that the legislature would solely depend upon the provisions of the Interpretation Act if there was an intention to legislate with such important consequences as to give powers of compulsory acquisition not to a single acquiring company but to a group of companies. The Interpretation Act is a drafting convenience. It is not to be expected that it would be used so as to change the character of legislation. Acquisition of shares by two or more companies is not merely the plural of acquisition by one. It is quite a different kind of acquisition with different consequences. It would presuppose a different legislative policy. (*Blue Metal Industries Ltd* v. *Dilley* [1970] AC 827, 848)

By contrast a few years earlier the Privy Council had held that the power of the Governor of Hong Kong to appoint "commissioners" to undertake an inquiry included a power to appoint a single commissioner: *Sin Poh Amalgamated (H.K.) Ltd* v. *Attorney-General* [1965] 1 WLR 62. The Interpretation Ordinance, the Judicial Committee said, was intended to avoid multiplicity of verbiage; nothing in the context there required a different reading.

166. The statutory usage of plurals will often clearly exclude the possibility of the application of the presumption that the singular is included: "The Tribunal shall consist of three members". In other cases the plural will be a distributive: "The function of the Tribunal shall be to consider applications ..." There can be no doubt that as a matter of ordinary usage the Tribunal can consider a particular application. But in still other cases Parliament might have meant only and exactly what it said. What is to be made of the use by the Hong Kong ordinance of the plural? Might that not indicate an intention that powers of that magnitude should be used only by two or more commissioners? See e.g. *Fordham* v. *Brideson* [1986] Vict LR 587. In other words should the "plural includes the singular"

proposition be retained? Are there cases of deliberate plural usage in the New Zealand statute book?

LEGAL ACTION

167. *Commencement.* See Paras. 15–25.

168. *Committed for trial*
"Committed for trial" means committed to prison with the view of being tried before a Judge and jury, or admitted to bail upon a recognisance or other security to appear and be so tried.

See the comment relating to "information" in Para. 130. Section 2 of the Summary Proceedings Act 1957 defines "committal for trial" as "committal to the High Court or a District Court under section 168A of this Act". Is it better to leave the matter for the relevant criminal statute? Does the provision need adjustment given the possibility of trial by judge alone?

169. *Oath and affidavit; Statutory declaration*
"Oath" and "Affidavit" include affirmation and statutory declaration; "swear" includes "affirm" and "declare" in the case of persons allowed by law to affirm or declare instead of swearing, or in any case of voluntary and other declarations authorised or required by law.
"Statutory declaration" if made –
(i) In New Zealand, means a declaration made under [the Oaths and Declarations Act 1957];
(ii) In the United Kingdom or any British possession other than New Zealand, means a declaration made before a Justice of the Peace, notary public, or other person having authority therein to take or receive a declaration under any law for the time being in force;
(iii) In any foreign country, means a like declaration made before a British Consul or Vice-Consul, or before any person having authority to take or receive such a declaration under any Act of the Imperial Parliament or the General Assembly or the Parliament of New Zealand for the time being in force authorising the taking or receiving thereof.

The Oaths and Declarations Act 1957 has a general application. It provides that every person is entitled to affirm instead of taking an oath (s.4) and accordingly those parts of the definition of "oath" which relate to affirmation appear unnecessary.

170. It appears to follow from the definition that someone who can make an affidavit may instead make a statutory declaration. Is that

intended? Compare ss. 7 to 11 of the Oaths and Declarations Act 1959. Should not the matter be regulated only by that Act?

171. Paragraph (i) of the definition of "statutory declaration" might be thought to state the obvious. Sections 10–12 of the 1957 Act regulate in some detail, which differs from that in paras. (ii) and (iii), the making of oaths and declarations outside New Zealand. Again, should not the matter simply be left for the 1957 Act?

172. *Prescribed*
"Prescribed" means prescribed by the Act in which that term is used, or by regulations made under the authority of that Act.

The definition of prescribed is commonly repeated, sometimes with some variations e.g. Commerce Act 1986 s.2; Securities Act 1978 s.2(1); showing lack of confidence in the fact that the s.4 definition applies to all Acts. In at least one case (s.5(i) of the Acts Interpretation Act 1924) the word "prescribed" relates to **another** Act other than the one in which the word is used.

173. *Public notification*
"Public notification" or "public notice", in relation to any matter not specifically required by law to be published *in extenso*, means a notice published in the *Gazette*, or in one or more newspapers, circulating in the place or district to which the act, matter, or thing required to be publicly notified relates or refers, or in which it arises.

Does the definition realistically provide sufficient notification? Does publication in the Gazette sufficiently draw the material to the public's attention?

174. Many particular statutes such as the local authority and planning statutes provide for special kinds of notice. The Local Government Act 1974, for example, defines "public notice" as a notice published in a newspaper circulating generally in the district or districts of the local authority or local authorities to which the subject matter of the notice relates; and "published" and "publicly notified" have corresponding meanings. A public notice setting out the object, purport or general effect of a document shall in any case be sufficient notice of that document.

175. In this area the need for public notice could well vary according to context. Might it not be more appropriate then to use particular definitions as they are relevant? Does the general definition have any function?

176. *Summary conviction*
"Summary conviction" means a conviction by a

Magistrate or one or more Justices of the Peace in accordance with the Summary Proceedings Act 1957.

See the earlier discussion of "information" and "committed for trial", Paras. 130 and 168.

TIME

177. *Financial year*
"Financial year" means, as respects any matters relating to the Public Account, or to money provided by Parliament, or to public taxes or finance, the period of 12 months ending on the expiration of the 31st day of March.

This definition is limited to public moneys. Sometimes a definition of "financial year" is included for other bodies, e.g. Companies Act 1955 s.291. Sometimes in respect of public bodies the definition is duplicated, e.g. Government Superannuation Fund Act 1956 s.2(1), Trades Certification Act 1966 s.2. In other cases it is repeated with different dates, e.g. State Insurance Act 1963 s.2 and Wool Testing Authority 1964 s.2 or with dates to be determined by some authority, as with the University Acts. Sometimes the effect of the definition is duplicated by stating 31st March as the time for accounts to be completed.

178. *Holiday*
"Holiday" includes Sundays, Christmas Day, New Year's Day, Good Friday, and any day declared by any Act to be a public holiday, or proclaimed by the Governor-General as set apart for a public feast or thanksgiving or as a public holiday.

The Holidays Act 1981 regulates entitlements to holidays with effect, among other things, for "any Act". Is there any need for the definition in s.4 which in addition differs in detail? Moreover the definition appears to confer a power to proclaim holidays. Should such a power be conferred in this way? In any event to what uses of the word "holiday" in what Acts does the the definition and power relate?

179. A different but related issue is the concept of working days for the fixing of times. Like the Public Works Act 1981, the Commerce Act 1986 for example defines "working day" as -

any day of the week other than -

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

This definition recognises that a lot of commercial activity winds down over the Christmas/New Year break. For some purposes this might be the more realistic and useful definition by defining holiday in the inverse.

180. At present the High Court Rules make an automatic extension of time apply during the period defined as the "long vacation". A special situation is also recognised in appeals to the Planning Tribunal. There appears to be a practice of standard drafting developing. Perhaps that should be recommended (see Para. 107).

181. Section 25 reads in part as follows –

> 25. **Provisions as to time, distances, appointments, powers, etc.** – In every Act, unless the context otherwise requires:
> (a) If the time limited by any Act for any proceeding, or the doing of any thing under its provisions, expires or falls upon a holiday, the time so limited shall be extended to and such thing may be done on the day next following which is not a holiday; and all further changes of time rendered necessary by any such alternation may also lawfully be made:
> (b) If in any Act any period of time dating from a given day, act, or event is prescribed or allowed for any purpose, the time shall, unless a contrary intention appears, be reckoned as exclusive of that day or of the day of that act or event: ...

182. *Month*
"Month" means calendar month.

Is there now a growing practice of referring to days, or, as appropriate, working days or sitting days (for Parliament), for shorter periods? Is the principal usage of months for criminal penalties?

PLACES

183. *Australasian and Australian Colonies*
"Australasian Colonies" means the Commonwealth of Australia as now or hereafter constituted, together with New Zealand and Fiji.
"Australian Colonies" includes every State now or hereafter forming part of the Commonwealth of Australia.

The former expression is still to be found in the Bills of Exchange Act 1908 s.4. Do either appear anywhere else? Can there be any doubt about the second definition (it is of course now anachronistic)?

184. *Borough*
"Borough" includes city.

See also "local authority", Paras. 145–149. A definition is also included in s.2 of the Local Government Act 1974 –

> "Borough" means a borough constituted under this Act or existing at the commencement of Part II of this Act; and includes a city.

Is such duplication necessary?

185. *Commonwealth country*
"Commonwealth country" means a country that is an independent sovereign member of the Commonwealth.

See also "Commonwealth citizen", Paras. 154–155. The definition is included presumably because of legislation which does distinguish between Commonwealth and other countries, usually labelled "foreign", e.g. Oaths and Declarations Act 1957, Crimes Act 1961, Shipping and Seamen Act 1952, Fugitive Offenders Act 1881 (as amended in 1976), Government Superannuation Fund Act 1956, Marriage Act 1955, High Court Rules 1985, R.522, and Consular Privileges and Immunities Act 1971. All those statutes in fact define Commonwealth country, in some cases with one or two additions to the s.4 definition. One addition (e.g. as in the High Court Rules and the Superannuation Act) is to include the Republic of Ireland as if it were a Commonwealth country. That appears to be unnecessary given the provision in the Commonwealth Countries Act 1977 s.4 that all existing law is to operate with respect to the Republic of Ireland as if it were a Commonwealth and not a foreign country. The other addition may however make a difference: "Commonwealth country" is to include every territory for the international relations of which the government of the country is responsible. The s.4 definition may not extend to such territories. The Family Proceedings Act 1980 takes a further step and includes in the definition of Commonwealth countries the Cook Islands, Niue and Tokelau (s.2, see also s.73(3)).

186. The Commonwealth Countries Act 1977, which inserted the definition in s.4, provides that for the purposes of court proceedings the schedule (as updated by Orders) of Commonwealth countries and a certificate from the Secretary of Foreign Affairs is conclusive evidence that the country in question is a Commonwealth country (s.2). That list does not however purport on its face to be applicable to statutes in a direct way.

187. The position is untidy, with considerable duplication. How many of the distinctions continue to make sense?

188. *Cook Islands*
"Cook Islands" means the islands and territories forming part of Her Majesty's dominions and situated within the boundaries set forth in the First Schedule to the Cook Islands Act 1915.

If this definition is still useful it should refer to the different description in article 1 of the Cook Islands Constitution (Schedule, Cook Islands Constitutuion Act 1964). But is there any need? No such provision is included for Niue or Tokelau.

189. *Land*
"Land" includes messuages, tenements, hereditaments, houses, and buildings, unless there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure.

This definition appears to be both archaic and infrequently used. Instead definitions are designed for more particular application. See for example the Property Law Act 1952 and the Land Transfer Act 1952. The latter defines land thus –

> "Land" includes messuages, tenements, and hereditaments, corporeal and incorporeal, of every kind and description, and every estate or interest therein, together with all paths, passages, ways, waters, watercourses, liberties, easements, and privileges thereunto appertaining, plantations, gardens, mines, minerals, and quarries, and all trees and timber thereon or thereunder lying or being, unless specially excepted.

190. *North Island, South Island*
"North Island" means the island commonly known as the North Island, and includes all islands adjacent thereto lying north of Cook Strait; and "South Island" means the island commonly known as the "South Island" or "Middle Island", and includes all islands adjacent thereto lying south of Cook Strait.

In what statutes are these expressions used? Can there really be any doubt about the meanings?

191. *Province*
"Province" or "provincial district" means any of the former Provinces of Auckland, Taranaki, Hawke's Bay, Wellington, Nelson, Marlborough, Canterbury, Otago or Westland.

In what statutes are these terms used? For one example see the Holidays Act 1981.

192. *Samoa*
"Samoa" or "Western Samoa" means the Independent State of Western Samoa.

Is this needed? See the comment on the Cook Islands (Para. 188).

193. *Territorial limits, Territorial sea, New Zealand as a territorial description*
"Territorial limits of New Zealand" and "limits of New Zealand" and analogous expressions mean the outer limits of the territorial sea of New Zealand. "Territorial sea of New Zealand" has the same meaning as in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977 and in all Acts passed before the commencement of this definition, unless the context otherwise requires, the expressions "Territorial waters of New Zealand", "New Zealand waters" and analogous expressions have the same meaning as the expression "Territorial sea of New Zealand".
"The colony", "this colony", "the Dominion", and "New Zealand", when used as a territorial description, mean the Dominion of New Zealand, comprising all islands and territories within the limits thereof for the time being other than the Cook Islands, and do not include Tokelau or Niue.

These provisions need careful attention in the light of New Zealand's changing constitutional status, and its changing territorial and maritime areas. See also the discussion in the Commission's Report on Imperial Legislation in force in New Zealand (NZLC R1) relating to boundaries, paras. 76 to 83 and part IV of the schedule to the draft Bill. See also Para. 229 below about the territorial scope of legislation. What are the statutes in which the expressions appear?

194. *Distance*
In the measurement of any distance for the purposes of any Act that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane (s.25(c)).

What is the experience of the operation of this provision? How often is provision made otherwise (e.g. in transport legislation)?

195. *Distributive construction*
Words referring to any country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing shall be construed distributively as referring to each country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing to whom or to which the provision is applicable.

This relates to the discussion of plural and singular (Para. 165–166). Need this be said?

196. *Formality*
The name commonly applied to any country, locality, district, place, body, corporation, society, officer, office, functionary, person, party, or thing means such country, locality, district, place, body, corporation, society, officer, office, functionary, person, party or thing, although such name is not the formal and extended designation thereof.

What is the experience of this provision? Would not common law maxims deal with the matter?

VIII POWERS

197. The Acts Interpretation Act 1924 does not just provide for the interpretation of legislation. It also confers powers on public officials, additional to those conferred by particular legislation. It is a government powers statute.

EARLY EXERCISE OF POWER

198. Section 12 confers the power to exercise certain powers conferred by statute in advance of the commencement of the Act –

> s.12 **Exercise of statutory powers between passing and commencement of an Act** – Where an Act that is not to come into operation immediately on the passing thereof confers power to make any appointment, to make or issue any instrument (that is to say, any Proclamation, Order in Council, order, warrant, scheme, rules, regulations, or bylaws), to give notices, to prescribe forms, or do anything for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction: that any instrument made under the power shall not, unless the contrary intention appears in the Act or the contrary is necessary for bringing the Act into operation, itself come into operation until the Act comes into operation.

This power is plainly a valuable one in practice, and is often used to make regulations and appointments at an earlier point so that they are operative when the Act takes effect. The provision was included in the legislation by at least 1903. No doubt improvements can be made to the detail: see for instance the point made in Para. 19 about the apparent requirement that the operative effect of the **whole** Act and not just the relevant part of it be postponed, and the question of terminology in Para. 201. The alternative would be to include particular provisions in each statute where such action has to be taken in advance of the general beginning of the Act.

Question 8.1

> What use do you make of s.12? What difficulties, if any, have you had with its operation? What changes would you suggest?

SIGNIFYING ADVICE AND CONSENT OF THE EXECUTIVE COUNCIL

199. Section 23, as enacted in 1983 at the time of the promulgation of the new Letters Patent relating to the Governor-General, is as follows:

> s.23 **Orders in Council, etc., how advice and consent of Executive Council signified** – (1) Where in any Act any act, power, function, or duty is required to be done, exercised, or performed by the Governor-General in Council, or where in any such Act any other like expression is used in relation either to the Governor-General or to Her Majesty the Queen, or where Her Majesty or the Governor-General, in exercising any other power or authority belonging to the Crown, whether prerogative or statutory, does so on the advice and with the consent of the Executive Council of New Zealand (in this section called an exercise of authority) it shall be sufficient, and shall be deemed always to have been sufficient, if the advice and consent of the Executive Council to such exercise of authority is signified at a meeting of the Council, although Her Majesty or, as the case may require, the Governor-General is prevented from attending or presiding thereat by some necessary or reasonable cause, if such meeting is duly convened and held in accordance with any law relating thereto for the time being in force.
>
> (2) On the advice and consent of the Executive Council being signified in manner aforesaid, Her Majesty the Queen or the Governor-General may exercise the authority in like manner as if Her Majesty had herself, or the Governor-General had himself, been present at the meeting at which such advice and consent were signified.
>
> (3) Every authority exercised in the above manner shall take effect from the date of the aforesaid meeting, unless some other time is named or fixed or is expressly provided by law for the taking effect thereof.
>
> (4) No authority exercised in manner aforesaid by Her Majesty the Queen or the Governor-General shall be called in question in any court on the ground that Her Majesty or, as the case may require, the Governor-General was not prevented by any necessary or reasonable cause from attending any such meeting of the Executive Council as aforesaid.

A version of this provision is to be found at least as early as 1888. Again, the provision appears to be one which works in practice. One question perhaps is whether it should be included in the Constitution Act 1986. That step was not however taken when that legislation was being prepared just last year. See also the question raised earlier about its application to non–statutory powers, Para. 10.

CITATION OF AUTHORITY

200. Section 24 is as follows:

> s.24. **Citation of authority under which Orders in Council, etc., made** – Where by any Act the Governor–General in Council, or the GovernorGeneral, or any officer or person named therein, is empowered to make or issue any Proclamation, Order in Council, warrant, or other instrument, it shall be sufficient to cite therein the particular Act authorising the making or issuing of the same; and it shall not be necessary to recite or set forth therein any facts or circumstances or the performance of any conditions precedent upon which such power depends or may be exercised.

The Evidence Act 1908 s.46 contains a related provision which indeed has been included in the Interpretation Act in the past: 1888, s.20 –

> s.46. **Gazette notice to be evidence of act of State** – Where by any Act the Governor–General, or the Governor–General in Council, or a responsible Minister of the Crown in New Zealand, being a member of the Executive Council, [or any other person], is authorised or empowered to do, exercise, or perform any act, power, function, or duty, any Gazette purporting to contain a notice of the doing, exercise, or performance of any such act, power, function, or duty shall be prima facie evidence that the same was lawfully done, exercised, or performed.

The provisions of s.24 have been on the statute book since at least 1888. Two broader questions – one of law, one of policy – arise from the provision: (1) What would the position in law be in the absence of the provision? (2) Should there now be a greater obligation on decision makers to explain and justify their decisions?

201. A narrow answer to the second question would be to require at least a reference to the particular section or sections invoked and not just the Act. The Official Information Act 1982 and related

developments suggest that the policy underlying s.24 is now out-moded. Indeed many of the decision makers affected by the provision can be required to give reasons in terms of that Act. A drafting point also arises from the provision: the decisions are to take the form of Proclamations, Orders in Council, warrants, or other instruments; s.12 (about the early exercise of powers) relates to "any instrument, that is to say, any Proclamation, Order in Council, **order**, warrant, **scheme, rules, regulations, or bylaws)**"; s.20A(1) and (2) includes Orders in Council, notices, regulations and rules, and s.25(h) relates to "bylaws, rules, orders, or regulations".

Question 8.2:

Should s.24 be retained? Should it be redrafted to take account of the policy considerations indicated above?

LOCALITY OF POWERS AND OFFICERS

202. Section 25(d) provides –

> s.25(d) If anything is directed to be done by or before a Magistrate or a Justice of the Peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done.

It does not appear to be the case that magistrates (or District Court Judges) and Justices of the Peace are limited in the way indicated. In any event if there is such a limit on them or other functionaries or officers would not that limit operate of its own force?

Question 8.3:

Need s.25(d) be retained?

SUCCESSORS AND DEPUTIES

203. Section 25(e) as amended in 1986 is as follows –

> s.25(e) Words directing or empowering the holder of any public office, other than a Minister of the Crown, to do any act or thing, or otherwise applying to that person by that person's name of office, include that person's successors in such office, and that person's or those persons' lawful deputy.

Is this provision required? So far as successors are concerned, are they not "holders" of the office or now the named officer? And a deputy, in terms of the very meaning of the word,

is a person appointed to act on behalf of the principal office holder. In addition many particular statutes regulate the position of deputies.

Question 8.4:

Need s.25(e) be retained? What use do you make of it? How does it relate to provisions in particular statutes?

POWERS OF REMOVAL AND SUSPENSION OF OFFICERS

204. Section 25(f) confers two powers, the first of which is important:

> s.25(f) Words authorising the appointment of any public officer or functionary, or any deputy, include the power to remove or suspend him, or reappoint or reinstate him, or appoint another in his stead, in the discretion of the authority in whom the power of appointment is vested; and in like manner to appoint another in the place of any deceased, absent, or otherwise incapacitated holder of such appointment.

The provision goes back to at least 1878 and can be related very much to the then prevailing common law (or perhaps prerogative) powers of the Crown to dismiss its servants at its pleasure. The courts have decided that such a statutory power of removal cannot be limited by contract. Should such important powers be conferred in this general way? Should they not be regulated in the particular statute, as of course they frequently are in provisions regulating tenure, causes for dismissal, procedures and appeal? What are the statutory powers of appointment which might still be glossed by this provision?

Question 8.5:

What use have you made of the first part of s.25(f)? Should it be retained?

205. The power to appoint new officers in a case in which the holder of the office has died or been removed appears to go without saying. The case of absent or incapacitated officers is often dealt with in particular statutes. Can it usefully be the subject of a general provision?

Question 8.6:

What use have you made of the second part of s.25(f)? Should it be retained?

USE OF POWER OVER TIME

206. Section 25(g) is as follows –

> s.25(g) Power given to do any act or thing, or submit to any matter or thing, or to make any appointment, is capable of being exercised from time to time, as occasion may require, unless the nature of the words used or the thing itself indicates a contrary intention:

Section 25(j), enacted in 1936, adds to the power:

> s.25(j) Power given to do any act or thing, or to make any appointment, is capable of being exercised as often as is necessary to correct any error or omission in any previous exercise of the power, notwithstanding that the power is not in general capable of being exercised from time to time.

Hansard does not indicate why this second power was added – there was no explanatory note. The Victorian Act s.40 and the United Kingdom Act s.12 contain provisions similar to the first of the two provisions but not to the second. The first provision does appear to remove some doubt about the common law position and has been found of use in reported cases. It may be that the drafting should be considered. Thus the Victorian and United Kingdom provisions extend to duties as well as to powers. This raises another matter about the wording to be used throughout the Act. The effect of the provision is very often neglected in the drafting of provisions which would otherwise be affected by it. Thus provisions empowering the making of regulations and the making of appointments (preeminently powers exercisable from time to time) routinely say that they can be exercised "from time to time".

207. Section 25(j) might be seen as raising more difficult issues since it creates a general power in the prescribed circumstances to undo actions which on their face are not to be undone. This raises difficult questions of law and policy. How does it relate to a power the exercise of which is said by its particular statute to be "final" for instance? Should a general provision address the question whether there should be a power to reconsider or rehear or should that not be resolved by the particular statute?

Question 8.7:

> Should s.25(g) be retained, perhaps with amendments? Can the retention of s.25(j) be justified? In what circumstances do you use the powers?

SUBORDINATE LAW-MAKING POWERS

208. Section 25(h) is as follows –

> s.25(h) Power given to make bylaws, rules, orders, or regulations includes the power from time to time to revoke the same absolutely, in whole or in part, or revoke and vary the same in part or in whole and substitute others, unless the terms or the nature and object of the power indicate that it is intended to be exercised either finally in the first instance, or only under certain restrictions, and also includes the power to prescribe a fine or penalty not exceeding $10 for the breach of any such bylaws, rules, orders, or regulations.

The Victorian Act s.27 and United Kingdom Act s.14 contain similar but narrower provisions. They appear to be restricted to instruments of a lawmaking kind (cf. "orders" in s.25(h): but would it be read more narrowly in its context?). They do not contain the provision about fines (see also s.20 of the Bylaws Act 1910). Section 9 of the Regulations Act 1936, as added in 1966, is also relevant:

> **Power to revoke spent regulations and other instruments** – (1) The Governor-General may from time to time, by Order in Council, revoke any regulations or, as the case may require, declare that they shall cease to have effect as part of the law of New Zealand, if he is satisfied that they have ceased to have effect or are no longer required.
>
> (2) This section is in addition to the provisions of any other enactment relating to the revocation of any regulations.
>
> (3) In this section, the term "regulations" includes, in addition to regulations within the meaning of section 2 of this Act, –
>
> (a) any Order in Council or Proclamation; or
> (b) Any notice, warrant, order, direction, determination, rules, or other instrument of authority –
>
> made or given by the Governor-General or any Minister of the Crown or any person in the service of the Crown, or made or given under any Act of the United Kingdom Parliament.

209. Any change here is to be co-ordinated with the review of the Regulations Act. The provision is also to be considered along with s.25(g) and (j), and various drafting

issues have to be addressed. One more general question relates to the scope of the provision.

Question 8.8:
Should s.25(h) be limited to instruments of a law-making character?

JUDICIAL OFFICERS

210. Section 25A is as follows -

s.25A. **Judicial officers to continue in office to complete proceedings** - (1) Any judicial officer whose term of office has expired or who has retired from his office shall, whether or not his successor has come into office, continue in office for the purpose of giving judgment in or otherwise determining, or of joining in the giving of judgment in or the determining of, any proceedings heard by him, or by any Court or tribunal of which he was a member, before the expiry of his term of office or his retirement.

(2) Except with the consent of the Minister of Justice, a judicial officer shall not continue in office under subsection (1) of this section for more than one month.

(3) Every judicial officer shall, while he continues in office under subsection (1) of this section, be paid the remuneration and allowances to which he would have been entitled if his term of office had not expired or he had not retired.

(4) No judicial officer who continues in office pursuant to this section shall be taken into account for the purposes of any enactment limiting the number of persons who may for the time being hold any specified judicial office.

(5) Nothing in this section shall derogate from the provisions of any enactment under which the holder of any office is to continue in office until his successor comes into office.

(6) In this section the term "judicial officer" means -

(a) A Magistrate
(b) Any other person (not being a Judge of any Court) having in New Zealand by law authority to hear, receive, and examine evidence.

This provision was introduced in 1973. There appear to be no express provisions relating to High Court Judges (or other officers named as judges such as the Judges of the Maori Land Court) and there may be uncertainty about the scope of the term "judicial officer". What in practice is the effect of these provisions? Is it satisfactory for a Minister to have the power conferred by s.25A(2)?

Question 8.9:

Should s.25A be retained in its present form? Is provision better made in particular situations?

ATTORNEY-GENERAL AND SOLICITOR-GENERAL

211. Section 4 provides -

> s.4 "Attorney-General", in respect of any power, duty, authority, or function imposed upon or vested in him in virtue of his office as Attorney-General, includes the Solicitor-General.

This, in terms of the introductory words to s.4, is a meaning given to Attorney-General as it appears in statutes. It can be traced back to at least 1878. The Finance Act (No. 2) 1952 s.27 is not limited to statutory powers:

> Functions of Attorney-General may be performed by Solicitor-General - Notwithstanding any Act, rule, or law to the contrary, any power, duty, authority, or function imposed upon or vested in the Attorney-General by virtue of his office may be exercised and performed either by the person holding the office of Attorney-General or by the person holding the office of Solicitor-General.

In 1979 provision was also made for a Crown counsel to act for the Solicitor-General in the event of absence, incapacity or vacancy in the office (Acts Interpretation Act 1924 s.25B.) These provisions recognise that in practice the Solicitor-General exercises virtually all of the powers of the Attorney-General. The question does arise whether in a very limited number of cases that complete substitution is appropriate. Consider for instance the powers of the Attorney-General in respect of the Parliamentary Counsel Office under the Statutes Drafting and Compilation Act 1920, ss. 2(1), 4(1)(b), (d), (e), and (2), and 5; cf. s.25B(9) of the Acts Interpretation Act 1924. The substitutions do not themselves allow the Attorney-General to exercise the powers assigned to the Solicitor-General. Consider for example the prosecution and appeal provisions in the Dental Act 1963 s.36, the Crimes Act 1961 s.390, and the Summary Proceedings Act 1957 s.115A(2). There is a question whether these provisions should be retained in an Interpretation Act or better belong in a separate law officers statute.

DELEGATION OF DISCRETIONARY POWERS

212. Section 2(2) of the Statutes Amendment Act 1945 (to be read as part of the Acts Interpretation Act 1924) provides –

> s.2 **Regulations not invalid because of discretionary authority** – ...
>
> (2) No regulation shall be deemed to be invalid on the ground that it delegates to or confers on the Governor–General or on any Minister of the Crown or on any other person or body any discretionary authority.

This provision has puzzled the courts (in the few reported cases in which it has been cited) and the commentators. Its effect is not at all clear. Since 1945 it has been quite often reproduced in specific contexts, presumably unnecessarily. There is a parallel and a clearer and more effective provision in the Bylaws Act 1910 s.13. That provision suggests both a possible repositioning in the regulations statute and a rewriting. But it may be that a general provision is not in any event appropriate, and that the matter should be dealt with when necessary in the particular statute.

Question 8.10:

> Should s.2(2) be retained? If so, should it be amended? Should this matter be taken up in the review of the Regulations Act? Or should the matter be left for provisions in particular statutes empowering the making of regulations?

IX CRIMINAL AND PENAL MATTERS

213. The Acts Interpretation Act 1924 contains a number of definitions of provisions relating to the criminal justice system: Paras. 130, 168 and 176. The only other relevant provision in the Act is s.6 relating to bodies corporate –

> s.6. **Application of penal Acts to bodies corporate –**
>
> (1) In the construction of every enactment relating to an offence punishable on indictment, or on summary conviction, the expression "person" shall, unless the contrary intention appears, include a body corporate.
>
> (2) Where under any legislative enactment any fine or forfeiture is payable to a party aggrieved, the same shall be payable to a body corporate where such body is the party aggrieved.

Subsection (1) may be declaratory of the common law, e.g. *Pahiatua Borough* v. *Sinclair* [1964] NZLR 499, 500. The provisions are to be read in the light of the general proposition that a company may be guilty of offences, even though the offences involve a mental element. Halsbury states three general exceptions: those offences which by their very nature can be committed only by natural persons (such as bigamy), those which cannot be committed vicariously (such as perjury), and those which are punishable only by imprisonment, *Halsbury's Laws of England* (4th ed.) vol.7, para. 758, and see *Nordik Industries Ltd* v. *Inland Revenue* [1976] 1 NZLR 194.

214. Subsection (1) on its face does not appear to add anything to the effect of the definition of "person" in s.4: person includes bodies corporate (and other bodies as well) unless inconsistent with the context (Para. 159). And somewhat similarly the question can be asked whether "party aggrieved" used in subs.(2) is not wide enough to cover bodies corporate.

215. Subsection (1), like s.4, does not however extend to those criminal offences defined in terms of "every one" or "offender" or "owner" as many are. Has that lack of specific coverage made any difference?

216. The context or other words in the particular criminal statute can, of course, exclude the operation of the presumptions, e.g. *R.* v. *Murray Wright Ltd* [1970] NZLR 476.

217. The provisions of s.6 were added in 1903. Similar provision is made in the United Kingdom Act and the Commonwealth draft but not in the Victorian Act.

Question 9.1:

Should the provisions of s.6 be retained? If so, should they be redrafted? In what way?

218. Other interpretation statutes suggest other criminal and penal provisions which might be included:

(1) Power to impose a fine on bodies corporate where the only power in the particular statute is a power of imprisonment (but see the Criminal Justice Act 1985 s.26(1) which already empowers a court which "may" sentence an offender to imprisonment to sentence the offender to pay a fine).

(2) Power to impose a period of imprisonment or a fine which is less than that prescribed (but see ss. 26(4) and 72 of the Criminal Justice Act 1985 which authorises that unless a minimum period or fine is fixed).

(3) Protection against double jeopardy (but see Crimes Act 1961 s.357, and the Summary Proceedings Act 1957 s.3(1)(j)).

(4) The application of new criminal law and penalties to situations arising in the past (but see the provisions discussed in Paras. 21 and 70–72).

X RELATED LEGISLATION

219. The fourth item of the reference is not limited to the Acts Interpretation Act 1924. It includes as well "related legislation". That is for good reason. The 1924 Act is in general applicable to all legislation enacted by Parliament and to all regulations. It accordingly has a pervasive operation throughout our statute book. So in varying degrees does other legislation, but in differing ways. For instance –

(1) The Constitution Act 1986 and legislation relating to the territorial sea, the continental shelf, the Cook Islands, Niue, Tokelau and Antarctica determine the **territorial extent** of the general run of legislation; in what areas is legislation in force as part of the law of New Zealand?

(2) The Constitution Act and other statutes (including the Electoral Act 1956) determine **who** may exercise **the powers of central government** conferred by a very large number of particular statutes.

(3) Similarly the Judicial Committee Acts, the Judicature Act 1908 and the District Courts Act 1947 determine who may exercise **judicial powers.** In addition, the Crimes Act 1961, the Summary Proceedings Act 1957, the Criminal Justice Act 1985, and assorted legislation, such as the Declaratory Judgments Act 1908 and the Inferior Courts Procedure Act 1909, confer various powers on the courts to supplement and support provisions contained in particular statutes.

(4) Other general statutes by contrast **impose controls** on the exercise of powers conferred by particular statutes, e.g. the Ombudsmen Act 1975, the Official Information Act 1982, the Public Finance Act 1977, and the Regulations Act 1936.

(5) Other general statutes determine **legal status,** for instance of corporations of one kind or another or of citizenship or of permanent residence, and **legal relationships** (of parent and child or of spouse). These have consequences in particular legislative contexts, for instance for the legal responsibility of "persons" or of parents.

(6) Particular words and phrases are given a meaning applicable generally throughout the statute book. The Decimal Currency Act 1964 and the Time Act 1974 provide good examples.

220. The legislation just indicated has this pervasive

effect on other legislation of its own force. Other statutes have a wider effect because the particular statute in issue expressly invokes them. The legislation might also have effects for legal relationships governed by the common law.

221. What follows is a preliminary list of such legislation. It probably includes provisions which do not belong there and no doubt there are omissions. The provisions are roughly grouped. It suggests the following questions (among others) –

Question 10.1:

(a) Should some of these provisions be included in the Acts Interpretation Act 1924?

(b) Conversely, should some of the provisions in the Acts Interpretation Act be included in one of the other generally applicable statutes?

(c) Are the provisions themselves satisfactory?

The first and second questions are largely formal but important nonetheless. The provisions might, if they are in one Act rather than the other, be neglected by lawyers, courts, those who administer and are subject to legislation, and those responsible for the drafting of legislation. The third question is a large one which we will be pursuing only in selected cases.

222. As mentioned in Para. 220, one category of provisions applies of their own force while the other are in practice applicable on an optional basis, that is to say because a particular statute invokes them. Section 107 of the Crimes Act 1961 is an example of the first category. It provides that it is an offence to breach the obligations imposed by any other enactment. The second category's best known member is probably the Commissions of Inquiry Act 1908. A great number of statutes expressly incorporate the powers and privileges established by that Act.

EXECUTIVE AND PARLIAMENTARY GOVERNMENT

223. The following statutes relate to basic questions about the establishment of our government, in part through Parliament, and the methods of exercise of central powers of government –

Constitution Act 1986
Electoral Act 1956
Oaths and Declarations Act 1957
Official Appointments and Documents Act 1919
Royal Titles Act 1974
Seal of New Zealand Act 1977

GENERAL ADMINISTRATION

224. These provisions regulate in a variety of ways the operation of the general administration of the government, e.g. the rules about the appointment of various public officers, salary and related matters and methods of control of public power –

Archives Act 1957
Civil List Act 1979
Commonwealth Countries Act 1977
Fees and Travelling Allowances Act 1951
Higher Salaries Commission Act 1977
Official Information Act 1982
Ombudsmen Act 1975
Public Finance Act 1977
Public Works Act 1981
Regulations Act 1936
State Services Act 1962
State Services Conditions of Employment Act 1977

COURTS

225. The following provisions establish courts or regulate their actions in a variety of ways which affect the operation of a very large number of other statutes –

Crimes Act 1961
Criminal Justice Act 1985
Declaratory Judgments Act 1908
District Courts Act 1947
Inferior Courts Procedure Act 1909
Judicature Act 1908
Judicature Amendment Act 1972
Judicial Committee Acts 1833 and later
Oaths and Declarations Act 1957
Summary Proceedings Act 1957

TRIBUNALS

226. Some of the following statutes are not generally applicable of their own force. Rather they become applicable, in some cases at least, because they are specifically adopted by the particular statute.

Arbitration Act 1908
Commissions of Inquiry Act 1908
(see e.g. the list under s.2 of the reprint)
Evidence Act 1908
Oaths and Declarations Act 1957

LOCAL GOVERNMENT

227. The scope of "Local authority" is defined or determined in a variety of ways in the following legislation –

Bylaws Act 1910
Local Authorities Loans Act 1956
Local Authorities (Members' Interests) Act 1968
Local Elections and Polls Act 1976
Local Government Act 1974
Ombudsmen Act 1975
Public Bodies Contracts Act 1959
Public Bodies Leases Act 1969
Public Bodies Meetings Act 1962 (see 1986 Bill)
Public Finance Act 1977
Rating Act 1967

PERSONAL AND LEGAL STATUS AND RELATIONSHIPS

228. The following important statutes determine status, capacities, rights and duties, and relationships for the purposes generally of the law (not just statutory) –

Adoption Act 1955
Age of Majority Act 1970
Aged and Infirm Persons Act 1909 (see 1986 Bill)
Citizenship Act 1977
Companies Act 1955 (and other legislation about legal persons)
Consular Privileges and Immunities Act 1971
Diplomatic Privileges and Immunities Act 1968
Family Proceedings Act 1980
Marriage Act 1955
Mental Health Act 1969
Status of Children Act 1969 (and 1986 Amendment Bill)

Legislation relating to doctors, dentists and architects also expressly has a wider impact. The word "Maori" is sometimes defined by reference to the definition in the Maori Affairs Act 1953.

TERRITORIAL SCOPE

229. "Territorial scope" is ambiguous. Legislation might apply to activities in a place without being in force as part of the law there. The Crimes Act 1961 provides good examples. Most of the crimes defined there are crimes only if their constituent elements occur in

New Zealand, as defined in the Acts Interpretation Act. Some acts are, however, crimes under New Zealand law wherever they occur; see for example treason and spying. The acts might not be crimes according to the law of the particular place they occur. In other cases the law is actually in force as part of the law of that place. That is so, to take just one example, of the Acts Interpretation Act in Tokelau law. In general New Zealand statutes are in force in Tokelau only if express provision is made to that effect. Express provision is made for the Acts Interpretation Act. The legislation listed below relates primarily to the second case, that is the content of the law in force in places beyond the land territory of the main islands of New Zealand.

Antarctica Act 1960
Constitution Act 1986
Continental Shelf Act 1964
Cook Islands Act 1915,
Cook Islands Constitution Act 1964
Kermadec Act 1887
Niue Act 1966
Niue Constitution Act 1974
Territorial Sea and Exclusive Economic Zone Act 1977
Tokelau Act 1948
Western Samoa Act 1961

There is a much larger group of statutes which have effects of the former kind, that is, they apply New Zealand law to events occurring in places outside New Zealand without making it part of the law of that place.

MEASUREMENTS

230. The following statutes deal with the determination of dates, time, the currency, weights and measures –

Calendar (New Style) Act 1750
Decimal Currency Act 1964
Time Act 1974
Weights and Measures Act 1987

231. The questions relating to the lists in Paras. 223 to 230 are asked in Para. 221.